92-796

No.

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

vs.

GEORGE T. LEWIS, CHARLES G. BLACK, J.J. HENRY, JOHN C. ROBERTSON, MICHAEL B. VAUGHN, RUBY I. MILLER, LILLIAN V. WALLS, SHELBY COUNTY GOVERNMENT, and STATE OF TENNESSEE,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Can the United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit make the acts of a State of Tennessee chancellor judicial acts after the Court of Appeals of Tennessee, Western Section at Jackson ruled that the chancellor lost jurisdiction in the matter?

2. Does the United States Constitution and 28 U.S.C. § 1654 permit a *pro se* citizen to enter the federal courts if he has presented allegations in his petition that are factual and true?

LIST OF PARTIES

The parties involved in the lower court were William N. Odom, Jr., petitioner and George T. Lewis, Charles G. Black, J. J. Henry, John C. Robertson, Michael B. Vaughn, Ruby I. Miller, Lillian V. Walls, Shelby County Government, and State of Tennessee, respondents.

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OPINIONS BELOW

This petition seeks review of the judgment and orders of the United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit, *William N. Odom, Jr. v. George T. Lewis, Charles G. Black, J.J. Henry, John C. Robertson, Michael B. Vaughn, Ruby I. Miller, Lillian V. Walls, Shelby County Government, State of Tennessee.*

Both the district court and the court of appeals dismissed the action for lack of a claim upon which relief can be granted.

Neither judgment or opinions was recommended for full-text publication.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked on the basis of 28 U.S.C. § 1257(3) because rights arising under the Constitution of the United States are claimed.

The order of the United States Court of Appeals for the Sixth Circuit was issued on August 10, 1992. This petition is filed within 90 days of that date as required by 28 U.S.C. § 2101(c). Sup. Ct. R. 20.4.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the

people peaceably to assemble, and to petition the government for a redress of grievances.

STATEMENT OF THE CASE

Petitioner, William N. Odom, Jr., filed suit in the United States District Court for the Western District of Tennessee, Western Division alleging that certain private citizens conspired with citizens acting under color of state law to violate petitioner's civil rights. Petitioner filed his suit under 42 U.S.C. §§ 1983, 1985 and 1988 as well as the First, Fourth, Sixth and Fourteenth Amendments.

Judge Jerome Turner, United States District Judge, ruled that the state chancellor had immunity in the matter and ruled that the petitioner had failed to state a claim upon which relief can be granted. Judge Turner ruled that private citizens must act under color of state law to be a conspirator under 42 U.S.C. § 1983. Judge Turner ruled that all the individuals acting under color of state law enjoyed either judicial, qualified, or quasi judicial immunity.

Judge Turner ruled that without an allegation of conspiracy that claims under 42 U.S.C. § 1985(2) must also fail.

Judge Turner ruled that the claims of the petitioner that his civil rights were violated were barred by the statute of limitations since the time that the petitioner served ten days in the Shelby County Correctional Center was more that one year prior to the filing of his complaint. Tennessee Code Annotated § 28-3-104 which governs the statute of limitations allows for a one year statute of limitations.

On November 8, 1991 the petitioner filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit.

On August 10, 1992 Circuit Judges Nelson, Norris and Suhrheinrich affirmed the judgment of the district court's order filed on October 4, 1991.

Judges Nelson, Norris and Suhrheinrich stated that accepting that the petitioner's factual allegations are true, they determine that petitioner undoubtedly can prove no set of facts in support of his claims that would entitle him to relief.

REASONS FOR GRANTING THE WRIT

I.

ACTS OF A STATE OF TENNESSEE CHANCELLOR WERE MADE JUDICIAL ACTS BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AFTER THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION AT JACKSON HAD RULED THAT THE CHANCELLOR LOST JURISDICTION IN THE MATTER.

Civil action can be brought pursuant to 42 U.S.C. § 1983 against individuals acting under color of state law for the violation of one's civil rights. A suit was brought by the petitioner (Appendix E) alleging that his civil rights had been violated by a State of Tennessee Chancellor, other state actors and certain private citizens. The Court of Appeals of Tennessee, Western Section at Jackson (Appendix D) ruled that the chancellor had lost jurisdiction in the matter which was before him in the Chancery Court, therefore the chancellor did not possess absolute immunity when he sentenced petitioner to 10 days in the Shelby County Correctional Center.

The United States District Court for the Western District of

Tennessee, Western Division (Appendix B and C) and the United States Court of Appeals for the Sixth Circuit (Appendix A) has ruled that the chancellor's acts were judicial and that he should be granted absolute immunity therefore petitioner has not stated a claim upon which relief can be made.

Petitioner requests a review of the United States District Court and the United States Court of Appeals for the Sixth Circuit's decision to restore absolute immunity to a state chancellor once it has been ruled by a lower state court that the chancellor had no jurisdiction in the matter before him. These courts have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision.

The United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit dismissed the action because petitioner failed to state a claim stating that all the state actors were entitled to immunity. Once the chancellor lost his jurisdiction he became a state actor, or one acting under color of state law, who possessed no immunity when he violated the petitioner's civil rights.

The United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit determined that private citizens cannot be a party to suits brought under 42 U.S.C. § 1983 and that state actors are entitled to immunity. The decision of these two courts would allow for no suits alleging violations of one's civil rights to be brought under 42 U.S.C. § 1983 which arise in their jurisdiction to be heard.

The petitioner has named a private attorney as one of the private citizens in his suit. In *Mullarkey v. Borglum*, 323 F. Supp.

1218 (S.D.N.Y. 1970), it stated that when defendant or one of the defendants is the private person, in order to show that a private person acted "under color of law" it is necessary to show: (1) that the private person conspired with state officials; or (2) sufficient state action to prove violation of plaintiffs' Fourteenth Amendment rights, *i.e.*, either state compulsion or sufficient state involvement.

The involvement of the private citizen or citizens with those acting "under color of law" would be the determining factor in determining if a private citizen could be a defendant in a suit filed under 42 U.S.C. § 1983. In *Buller v. Buechler,* 706 F.2d 844, 72 A.L.R. Fed. 711 (C.A. 8 S.D. 1983), the court found that the private citizen involvement with state actors to be one of the determining factors as to whether a private citizen acted "under color of law."

The United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit ruled that the petitioner's claims were barred by the statute of limitations. These two courts' ruling that private citizens were not state actors and that the state actor had immunity made all acts of these defendants run from the date of the actual act. The purpose of the conspiracy between the private citizens and the state actors was to make their acts judicial.

As stated by the Court of Appeals of Tennessee, Western Section at Jackson (Appendix D) the acts of the chancellor as well as other state actors were judicial without an appeal. If the petitioner had not appealed the acts of these private citizens and state actors to a higher state court their acts would have been judicial. This was the purpose of the conspiracy, to make their acts judicial, therefore the statute of limitations involving state actors to make their acts judicial can only run from the moment that it is determined that their acts were not judicial.

The acts that were judicial acts did not become nonjudicial acts until the Court of Appeals of Tennessee, Western Section at Jackson filed their opinion on February 25, 1988 which stated that the chancellor's acts were not judicial acts. Petitioner filed his suit in the United States District Court for the Western District of Tennessee, Western Division on February 23, 1988 within the one year statute of limitations.

II.

THE UNITED STATES CONSTITUTION AND 28 U.S.C. § 1654 PERMITS A *PRO SE* CITIZEN TO ENTER THE FEDERAL COURTS IF HE HAS PRESENTED ALLEGATIONS IN HIS PETITION WHICH ARE FACTUAL AND TRUE.

There is a First Amendment right for citizens to have access to the courts in their own behalf. This First Amendment right is clearly reinforced by 28 U.S.C. § 1654.

The rulings in this matter made by the United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit would allow no *pro se* citizen under their jurisdiction to have access to the federal courts.

The rulings of the United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit in this matter is in conflict with an applicable decision made by the Supreme Court. With no view whatever on the merits of petitioner's allegations, in *Haines v.. Kerner et al.*, 404 U.S. 519 (1972) the Supreme Court found that a petitioner is entitled to an opportunity to offer proof in the lower federal courts.

A ruling on the statute of limitations by the District Court could only be made after proof had been offered in this matter. The conspiracy or acts of the private citizens with those acting under color of state law would determine the time at which the statute of limitations would begin to run. The acts complained of in this matter were judicial acts until the opinion of the Court of Appeals of Tennessee, Western Section at Jackson was filed on February 25, 1988. Only the offering of proof by the petitioner could determined if the action was barred by the statute of limitations.

The Court of Appeals for the Sixth Circuit has found that the petitioner can prove no set of facts in support of his claims that would entitle him to relief. The petitioner can prove many facts in support of his claims. The Court of Appeals for the Sixth Circuit's ruling indicates that a greater burden should be placed on the *pro se* petitioner in the matter than that of proving by an preponderance of the evidence that the defendants conspired to deprive the petitioner his civil rights secured by the Constitution.

The petitioner can prove that the defendant, Charles G. Black, attorney, presented to Chancery Court a Temporary Restraining Order (Appendix F) which was defective on the surface. The Temporary Restraining Order did not conform to Rule 65.02 of the Tennessee Court Rules Annotated (Appendix G). The Temporary Restraining Orders was not specific and referred to the complaint as to what acts were be restrained.

The defendant, John C. Robertson, Chancery Court Clerk, accepted this defective document and the defendant George T. Lewis, Chancellor, issued a fiat when the document did not conform to Rule 65.02, Tennessee Court Rules Annotated.

The petitioner can prove that defendant, Charles G. Black, attorney, sent a personal note to the Sheriff (Appendix H) instructing him on how the Temporary Restraining Order should be

delivered. The petitioner can prove that defendant Black wanted the complaint served during business hours at the petitioner's place of employment where it was reasonably expected that a telephone call would be placed by the petitioner to defendant Vaughn's employer since the Temporary Restraining Order was not to be served on petitioner with the complaint. Defendant Black did not want the complaint delivered at petitioner home in the evening hours or early morning hours.

The petitioner can prove that the defendant J. J. Henry, Deputy Sheriff, did not serve the Temporary Restraining Order on the petitioner but that it was delivered to petitioner by a Post Office employee sealed in a Post Office envelope.

The petitioner can prove that the defendant J. J. Henry testified (Appendix I) at the Chancery Court trial on December 8, 1987 that he served the Temporary Restraining Order on the petitioner. Defendant Henry testified that he read the Temporary Restraining Order to petitioner. In his brief to the United States Court of Appeals for the Sixth Circuit (Appendix J) defendant Henry, states that he did not serve the Temporary Restraining Order on petitioner.

The petitioner can prove that defendant Lewis, Chancellor, defendant Black, Attorney, and defendant J.J. Henry, Deputy Sheriff, conspired at the Chancery Court trial on December 8, 1986 to cover up that the Temporary Restraining Order had not been served on petitioner. Defendant Lewis would not permit petitioner to present his proof at the Chancery Court trial on service of the Temporary Restraining Order (Appendix I).

The petitioner can prove that Defendant Lewis, Chancellor, lost jurisdiction of the Circuit Court matter when petitioner challenged his jurisdiction. The petitioner can prove that defendant Lewis' acts were not judicial acts at the time he sentenced

petitioner to the Shelby County Correctional Center. Petitioner can prove that the acts of defendant Lewis were taken in clear absence of all jurisdiction once objection was made to the Chancery Court's jurisdiction.

The petitioner can prove that defendants Vaughn, Miller, Walls, and Black, private citizens, did not have a claim at the time the complaint was filed in the Chancery Court matter. Petitioner can prove sufficient state action to prove violation of his civil rights by both these private citizens and state actors.

CONCLUSION

For the foregoing reasons, petitioner prays that this Honorable Court grant this petition for writ of certiorari and, upon review, reverse the decision of the United States Court of Appeals for the Sixth Circuit to dismiss his civil rights suit for failing to state a claim and remand it to the United States District Court for the Western District of Tennessee, Western Division for further proceedings.

Respectfully submitted,

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APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED AUGUST 10, 1992

No. 91-6439

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM N. ODOM, JR.,

Plaintiff-Appellant,

v.

GEORGE T. LEWIS; CHARLES G. BLACK; J.J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE,

Defendants-Appellees.

ORDER

BEFORE; NELSON, NORRIS and SUHRHEINRICH, Circuit Judges.

William Odom, Jr., a pro se Tennessee citizen, appeals a district court order dismissing his civil rights suit filed pursuant to 42 U.S.C. §§ 1983, 1985, and 1988 for failure to state a claim. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Appendix A

Seeking monetary relief, Odom sued several private and state actors, alleging that they had conspired to violate his civil rights. The district court determined that Odom's complaint failed to state a claim, because the private citizens were not state actors within the meaning of 42 U.S.C. § 1983 and the state actors were entitled to immunity. The court also determined that his §§ 1985 and 1988 claims were meritless and all his claims were barred by the statute of limitations. Odom has filed a timely appeal.

Upon review, we conclude that the district court properly determined that Odom failed to state a claim. Construing the complaint in the light most favorable to Odom and accepting his factual allegations as true, we determine that Odom undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. *Dana Corp. v. Blue Cross and Blue Shield,* 900 F.2d 882, 885 (6th Cir. 1990).

Accordingly, we affirm the judgment for the reasons set forth in the district court's order filed on October 4, 1991. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
s/ Leonard Green
Clerk

[stamped]
ISSUED AS MANDATE; 9/1/92
COSTS; No Costs
FILING FEE . . . . . $
PRINTING . . . . . $
TOTAL . . . . . $

A TRUE COPY
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LEONARD GREEN, Clerk
By s/ Diane Schnur
Deputy Clerk

APPENDIX B — DECISION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED OCTOBER 11, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CASE NUMBER: 89-2183-TU/A

WILLIAM N. ODOM, JR.,

Plaintiff

v.

GEORGE T. LEWIS, et al,

Defendants

JUDGMENT IN A CIVIL CASE

Decision by court: This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is dismissed in accordance with the Order On Defendants' Motions To Dismiss filed on October 4, 1991.

APPROVED:
s/ Jerome Turner
JEROME TURNER
UNITED STATES DISTRICT JUDGE

Date 10-10-91

s/ J. Franklin Reid
Clerk

[stamped]
This document entered on docket sheet in compliance with Rule 58 and/or 79(a) FRCP on 10-11-91

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED OCTOBER 4, 1991

[stamped]
This document entered on docket sheet in compliance with Rule 58 and/or 79 (a) FRCP on 10-4-91.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NO. 89-2183-TUA

WILLIAM N. ODOM, JR.,

Plaintiff,

VS.

GEORGE T. LEWIS, et al.,

Defendants.

ORDER ON DEFENDANTS' MOTIONS TO DISMISS

In this civil rights action against a Shelby County Chancellor, various court personnel, the Shelby County Government, the State of Tennessee, and three private citizens and their attorney, plaintiff William N. Odom, Jr. alleges the defendants conspired to deprive him of his civil rights in violation of 42 U.S.C. §§ 1983, 1985, and 1988, as well as the First, Fourth, Sixth and Fourteenth Amendments. Plaintiff also alleges he has certain pendent state claims against the parties although he does not specify what such

claims might be.

Plaintiff's allegations stem from a state court action initiated by the three individual defendants wherein they sued Odom (the plaintiff in this action) for the tort of outrageous conduct. That action was eventually dismissed on appeal when the Tennessee Court of Appeals ruled that plaintiff's objection to the unliquidated damages claim deprived Chancery Court of jurisdiction.

Presently before the court are four motions to dismiss on various grounds encompassing all the defendants. Among the grounds presented are: insufficiency of process under *Fed. R. Civ. P.* 12(b)(4); failure to state a claim upon which relief can be granted under Rule 12(b)(6); expiration of the applicable statute of limitations; sovereign immunity; judicial immunity; and qualified immunity.

After due consideration of the pleadings and supporting memoranda of law submitted by the parties, the court finds dismissal to be proper for the following reasons. With regard to Chancellor Lewis, the court finds he is entitled to judicial immunity inasmuch as he was acting under state statute within his judicial capacity. All of the acts alleged to have been committed by the Chancellor were judicial acts and were not taken in the clear absence of all jurisdiction. The fact that the Tennessee Court of Appeals eventually agreed with the plaintiff that the lawsuit filed in Chancery Court must be dismissed once a party objects to the trial of such an unliquidated claim in Chancery Court does not require a holding that the Chancellor acted in the clear absence of all jurisdiction. An injunction was sought and the jurisdictional statute, like most statutes, lent room for argument concerning the extent to which it limited jurisdiction.

The State of Tennessee is entitled to sovereign immunity.

Appendix C

Deputy Sheriff J. J. Henry was acting within the scope of his duties as a court employee and the writ is not alleged to have been invalid on its face; he is entitled to quasi-judicial immunity.

Chancery Court Clerk John C. Robertson is said to have required plaintiff to post a deed of trust to secure his right to appeal. Such conduct does not violate any clearly established constitutional right of the plaintiff and defendant Robertson is entitled to qualified immunity from suit for damages.[1] The complaint that Robertson conspired with the other defendants is totally devoid of any factual statements; it is a wholly conclusory allegation that, by itself, is insufficient to withstand a motion to dismiss. Moreover, as is true with respect to the conclusory allegation of conspiracy against the other defendants, there is no allegation that such conspiracy was formed for the purpose of class-based invidious discrimination. Without such an allegation, the conspiracy claims under 42 U.S.C. § 1985(2) fail. *See Allen v. Allied Plant Maint. Co.*, 636 F. Supp. 1090, 1093 (M.D. Tenn. 1986).

A liberal construction of plaintiff's pro se pleadings reveals that the Shelby County Government has essentially been sued for its supervision of Deputy Sheriff Henry and the Shelby County Election Commission. While plaintiff claims a de facto policy of certifying unlearned lawyers as judicial candidates and "permitting illegal service of process," he makes no specific allegations as to how this policy was arrived at, implemented, or applied to him. Plaintiff thus fails to state a claim in this regard upon which relief can be granted.

Regarding the individual defendants, Michael B. Vaughn, Ruby I. Miller, and Lillian V. Walls, and their attorney Charles G.

---

1. The same may also be said with respect to the allegations against Deputy Henry.

Appendix C

Black, plaintiff does not allege any facts to show they acted under color of state law, as is required for a section 1983 action, except insofar as he alleges that they conspired with state actors. However, plaintiff has failed to allege with any specificity how their actions in pursuing a civil state court action constituted a conspiracy. A bare statement that the defendants conspired to infringe the plaintiff's civil rights with no fleshing out of the particulars cannot withstand a motion to dismiss. *See Gutierrez v. Lynch*, 826 F.2d 1534, 1538-39 (6th Cir. 1987); *Barkley v. City of Jackson*, 705 F. Supp. 390, 392 (W.D. Tenn. 1988).

Finally, the court addresses the question of the statute of limitations raised by a number of the defendants. The final act alleged by plaintiff occurred on November 2, 1987 when he posted collateral to secure his right to appeal. This suit was filed on February 23, 1989, and is governed by *Tenn. Code Ann.* § 28-3-104, a one year statute of limitations. Plaintiff argues that his rights were not violated until Chancery Court lost control of the suit when the Tennessee Court of Appeals dismissed the Chancery Court suit in February of 1988. The acts complained of, however, occurred more than one year prior to the filing of this suit and claims that such acts violated plaintiff's civil rights are therefore barred by the statute of limitations.

Absent federal claims upon which federal jurisdiction can be sustained, plaintiff's pendent state claims are not justiciable before this court.

The four motions of the defendants to dismiss are granted and this action is dismissed.

IT IS SO ORDERED this 3rd day October, 1991.

s/ Jerome Turner
JEROME TURNER
UNITED STATES DISTRICT JUDGE

APPENDIX D — OPINION OF THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION AT JACKSON FILED FEBRUARY 25, 1988

IN THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION AT JACKSON

Shelby Equity
No. 43

M. VAUGHN,

Plaintiff-Appellee,

VS.

N. ODOM, JR.,

Defendant-Appellant.

From the Shelby County Chancery Court at Memphis
The Honorable George Lewis, Chancellor

Charles G. Black, Memphis
Attorney for the Plaintiff-Appellee

Richard J. Ryan, Jr., Memphis
Attorney for the Defendant-Appellant

OPINION FILED: FEB 25 1988

REVERSED AND REMANDED

FARMER, J.

CRAWFORD, J.: (Concurs)

MCLEMORE, Sp. J.: (Concurs)

Appendix D

This is an appeal by William Odom from the Chancellor's decree finding him guilty of "outrageous conduct and unconscionable torte (sic)."

Over a period of approximately one and one-half years, Vaughn and Odom engaged in a homosexual affair. When Vaughn tried to end this relationship, Odom became angry and threatened to tell Vaughn's family and employers about their affair. He made tapes of telephone conversations with Vaughn that he subsequently used to carry out these threats.

On February 6, 1986, Vaughn filed a complaint alleging that Odom was guilty of outrageous conduct; making threats for the purpose of extortion; T.C.A. § 39-2-701 (1932); and violating federal wiretapping and extortion statutes 18 U.S.C.A. §§ 2511-(2)(d), 2520, 875(d). He asked the Chancellor to issue a restraining order or temporary injunction to enjoin Odom from carrying out his threats; to issue a mandatory injunction requiring Odom to deliver the taped telephone conversations to the Chancellor; and to award him actual and punitive damages pursuant to the statutes, as well as attorney's fees.

The Chancellor issued a restraining order on February 7, 1986. Notice of this order was served on Odom the same afternoon at 2:15. Yet despite this order, between the hours of 4:00 and 5:00 p.m. on February 7, Odom began carrying out his threats. He called Vaughn's employers and told them that Vaughn was a homosexual and further threatened to inform Vaughn's customers. This call resulted in Vaughn being called in and questioned by his employers and subsequently being given the choice to resign his position or be dismissed. Vaughn chose to resign rather than have his personnel file state that his dismissal was due to excessive tardiness, customer complaints, and his admission of a homosexual affair.

Appendix D

Later the same evening Odom went to a social function and told several people in attendance that Vaughn was a homosexual. In addition he telephoned several of Vaughn's relatives, "carrying out his threats to destroy [Vaughn's] reputation among his friends, family, and associates."

An amended complaint filed by Vaughn on February 19 alleged that Odom had violated the restraining order and should be found in contempt of court. It reasserted the charges of outrageous conduct and civil and criminal acts of blackmail and extortion, but was amended to seek $250,000.00 in actual damages, in addition to punitive damages.

In a pre-answer motion, Odom sought to have the complaint dismissed, asserting that chancery court lacked subject matter jurisdiction and that Vaughn failed to state a claim upon which relief could be granted. The Chancellor denied this motion to dismiss and continued the injunction, reserving a ruling on the charges of contempt until trial was had on the merits. The Chancellor also denied Odom's motion to appeal the issue of jurisdiction pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure. Odom then filed an answer which admitted his exposure of the affair but asserted truth as an absolute defense to the exercise of his First Amendment right of freedom of speech. He also filed a Cross Complaint for Fraud and Intentional Infliction of Emotional Distress.

At the conclusion of the evidence, the Chancellor found Odom guilty of the tort of outrageous conduct and awarded Vaughn $5,000.00 in actual damages and $25,000.00 in punitive damages. In addition, Odom was found in contempt of court for failing to obey the restraining order, and was sentenced to serve ten days in jail. However, the finding of contempt is not raised in this appeal. Odom has appealed from the judgment and has raised several

issues; however the one that is determinative is his challenge to chancery court's jurisdiction.

The statute granting chancery court concurrent jurisidiction with circuit court provides:

> Jurisdiction of civil causes — Transfer to circuit court. — (a) The chancery court has concurrent jurisdiction, with the circuit court, of all civil causes of action, triable in the circuit court, *except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to property not resulting from a breach of oral or written contract*; and no demurrer for want of jurisdiction of the cause of action shall be sustained in the chancery court, except in the cases excepted.
>
> (b) Any suit in the nature of the cases excepted above brought in the chancery court, where objection has not been taken by a plea to the jurisdiction, may be transferred to the circuit court of the county, or heard and determined by the chancery court upon the principles of a court of law. (emphasis added)

T.C.A. § 16-11-102 (1977).

This statute confers subject matter jurisdiction on chancery court except in cases involving unliquidated damages for injuries to person, character, or property. The tort of outrageous conduct is described as an intentional or reckless infliction of severe emotional distress by means of extreme or outrageous conduct.

Dunbar v. Strimas, 632 S.W.2d 558,561 (Tenn.App. 1981). The recovery sought by the plaintiff is clearly for injury to the person or character for unliquidated damages and falls within the exception to the statute conferring concurrent jurisdiction. If a defendant does not object to jurisdiction, the Chancellor has the discretion to hear the cause of action or transfer it to circuit court. However, once an objection has been made, the subject matter jurisdiction is taken away, and the Chancellor *must dismiss* the action.

Odom objected to the chancery court's jurisdiction in his first response to the complaint[1]. The Chancellor refused to dismiss the suit and heard it on the merits. However, since the jurisdiction of chancery court to hear this case was taken away once Odom made a timely objection, the judgment entered against Odom is reversed.

The plaintiff's contention that chancery court has jurisdiction is based on the maxim that when it has jurisdiction for one purpose, it will take jurisdiction for all purposes. That because the court below exercised jurisdiction in granting injunctive relief, it therefore had jurisdiction to decide the tort action of outrageous conduct. However, as stated in *Tucker v. Simmons*, 287 S.W.2d 19,21 (Tenn. 1956):

> "It is sometimes broadly stated that when a chancery court has jurisdiction for one purpose, it will take jurisdiction for all purposes; but this means all purposes 'incidental to its jurisdiction of the main subject.' "

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1. Failure to raise this objection at the first opportunity would have constituted a waiver by Odom, and chancery court would have had subject matter jurisdiction over this claim. *See* Pivnick, Tenn. Circuit Court Prac. (2nd Ed.) § 3.

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* * *

> The inference clearly is under these authorities that if the main thing involved in the lawsuit is not of an equitable nature such as the equity court has [been] given jurisdiction then courts of equity will not take jurisdiction.

We hold that the chancery court, simply by virtue of enjoining the commission of a tort of which it lacks subject matter jurisdiction, does not thereby obtain jurisdiction of the tort action.

The costs of this appeal and in the trial court are taxed to the appellee, for which execution may issue if necessary.

s/ Farmer
FARMER, J.

s/ Crawford
CRAWFORD, J. (Concurs)

s/ McLemore
MCLEMORE, Sp. J. (Concurs)

APPENDIX E — COMPLAINT IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED FEBRUARY 23, 1989

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NO. 89-2183 TUA

WILLIAM N. ODOM, JR.,

Plaintiff,

VS.

GEORGE T. LEWIS, Shelby County Chancellor; CHARLES G. BLACK, Practicing Attorney; J.J. HENRY, Deputy Sheriff; JOHN C. ROBERTSON, Chancery Court Clerk and Master and Special Chancellor; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; and STATE OF TENNESSEE GOVERNMENT.

Defendants.

[stamped]
JEROME TURNER
JAMES H. ALLEN

JURY TRIAL DEMANDED

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COMPLAINT

Comes now the Plaintiff, William N. Odom, Jr., Pro Se, and in support of his cause of action would state as follows:

1. The Plaintiff is an adult resident citizen of Shelby County, Tennessee and a United States Citizen.

2. The Defendant, George Lewis, is an adult resident of Shelby County, Tennessee, and is a duly elected Chancellor of Chancery Court, Shelby County acting under color of laws of the State of Tennessee, and is charged and vested with the authority for and responsibility of adjudicating matters filed in Chancery Court, Shelby County, Tennessee. He is sued in his official and individual capacities.

3. The Defendant, Charles G. Black, is an adult resident of Shelby County, Tennessee, and is a practicing attorney in the State of Tennessee acting under color of the laws of the State of Tennessee, and is charged as an officer of the Court to represent individuals in matters at law submitting good faith pleading and upholding the laws of the State of Tennessee. He is sued in his official capacity as an officer of the court and in his individual capacity as a practicing attorney.

4. The Defendant, J.J. Henry, is an adult resident citizen of Shelby County, Tennessee and was regularly employed as an officer of the Shelby County Sheriff's Department and at all material times herein was acting under color of law. He is sued individually and in his official capacity.

5. The Defendant, John C. Robertson, is an adult resident citizen of Shelby County, Tennessee and is the duly elected or

appointed Clerk and Master of Chancery Court, Shelby County and an appointed Special Chancellor of Chancery Court, Shelby County, acting under color of the laws of the State of Tennessee, and is charged and vested with the authority of supervising and directing the employees of the Chancery Court Clerk Office. And as a Special Chancellor is charged and vested with the authority for and responsibility of adjudication matters filed in Chancery Court, Shelby County, Tennessee. He is sued in his official and individual capacities.

6. The Defendant, Michael B. Vaughn, is an adult citizen of Orange Park, Clay County, Florida. He is sued generally and in his individual capacity.

7. The Defendant, Ruby I. Miller, is an adult resident citizen of Shelby County, Tennessee. She is sued generally, individually, and in her self-appointed financial trustee of Michael B. Vaughn capacity.

8. The Defendant, Lillian V. Walls, is an adult resident citizen of Shelby County, Tennessee. She is sued generally, individually, and in her self-appointed financial trustee of Michael B. Vaughn capacity.

9. The Defendant, Shelby County Government, is and all times relevant hereto, was a duly organized governmental body existing by virtue of and pursuant to the laws and Constitution of the State of Tennessee. At all relevant times herein, the County oversaw the management and funding of the Shelby County Sheriff's Department and Election Commission, and paid its employees, including J.J. Henry, and is ultimately responsible for the policies and practices, whether written or defacto, of the Sheriff's Department and Election Commission.

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10. The Defendant, State of Tennessee Government, is and all times relevant hereto, was a duly organized governmental body existing by virtue of and pursuant to the laws and Constitution of the United States of America. At all relevant times herein, the State oversaw the election of Chancery Court Judges and the election or appointment of Chancery Court Clerks and Masters and the granting of license to attorneys to practice law in the State of Tennessee. That the State paid its Chancellors and Clerks and Masters and is ultimately responsible for its practices and rulings, written or defacto, of the Chancellors and Clerks and Masters. That the State grants license to attorneys and are ultimately responsible for practicing attorneys to uphold the laws of the State of Tennessee.

11. This cause of action is brought pursuant to 42 USC Sections 1983, 1985 and 1988, and the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

12. This Court has jurisdiction over this action based upon 28 USC Sections 1331, 1332 and 1343, as well as the abovesaid statutory and constitutional provisions. The Plaintiff further invokes the pendant jurisdiction of this Court to hear and decide claims arising under state law.

13. The cause of action arose in Shelby County, Tennessee, in the Western District, Western Division of the State of Tennessee, thereby making venue proper pursuant to 28 USC Section 1391(b).

14. As background for his cause of action the Plaintiff would state that prior to August, 1984, Defendants Walls and Miller became the self-appointed financial trustees of Defendant Vaughn. Defendant Walls is Defendant Vaughn's sister and Defendant Miller is Defendant Vaughn's aunt. That on or about August 1, 1984, Defendant Vaughn was 41 years old. He was divorced and the father of four children. Defendant Vaughn was an eleven (11) year veteran

of the U.S. Navy and also had been a patrolman with the Memphis City Police Department for eight (8) years. He resided at Coldwater, Mississippi with three of his four children. That on or about August 1, 1984, Defendant Vaughn was employed by ATS Telephone Systems in Memphis, Tennessee. Prior to August, 1984, Defendant Vaughn had been in both Wage Earner and Bankruptcy.

That on or about August 15, 1984, Defendant Miller purchased a house at 829 Freeman Street, Memphis, Tennessee. Defendant Miller moved Defendant Vaughn and his children into this house. Prior to August 15, 1984, Defendants Vaughn and Walls opened a joint checking account from which to conduct Defendant Vaughn's financial affairs. Defendant Vaughn was to deposit his pay checks into this account with Defendant Walls making disbursements for Defendant Vaughn's debts. From this same checking account Defendant Walls was to pay Defendant Miller the amount of the house note of 829 Freeman Street.

That prior to August, 1984, Defendant Vaughn had borrowed more than Fifteen Thousand Dollars ($15,000.00) from Defendant Miller. Also prior to August, 1984, Defendant Walls had made a loan from her Credit Union for Defendant Vaughn. The amount of the monthly Credit Union note was being paid from the joint checking account of Defendants Walls and Vaughn.

Defendant Vaughn and his children moved into 829 Freeman Street on or about August 20, 1984. This house was located next door to Plaintiff. Shortly after Defendant Vaughn moved next door to Plaintiff he and Plaintiff entered into a homosexual relationship. At about the same time Plaintiff began to pay extra expenses of Defendant Vaughn. Defendant Vaughn's service revolver was in the Pawn Shop and he was about to lose it for non-payment. Defendant Walls was not aware of this obligation. Plaintiff paid the gun out for Defendant Vaughn. From that time until February, 1986, Plaintiff

paid over Ten Thousand Dollars ($10,000.00) on debts and luxuries for Defendant Vaughn and his family. Plaintiff paid for Defendant Vaughn's children's Christmas gifts in 1984. The amount of this Christmas exceeded Five Hundred Dollars ($500.00).

That on or about August 1,1984, Plaintiff had lived at 837 Freeman Street for twenty five (25) years. Plaintiff moved into this house when he was first married. Plaintiff lived with wife and two sons. Shortly after Plaintiff and Defendant Vaughn entered into the homosexual relationship Plaintiff grew to love Defendant Vaughn. Defendant Vaughn told Plaintiff he loved him also. On or about November 14, 1984, Plaintiff told his wife of the relationship. Plaintiff's wife moved out of 837 Freeman Street on or about November 14, 1984.

Defendant Vaughn helped Plaintiff destroy the home of Plaintiff. Plaintiff and Defendant Vaughn moved a piano, a full six-piece bedroom suite, a sofa, a television, a freezer full of food and many smaller items to Defendant Vaughn's house, 829 Freeman Street. Plaintiff gave Defendant Vaughn a notarized bill of sale for these items. Also, Plaintiff gave Defendant Vaughn the signed title to his 1976 Chevrolet.

On or about November 14, 1984, Plaintiff's wife sued for divorce asking for relief in being able to return to her home. Plaintiff moved around the corner to 857 Bowen Circle, another house he owned with his brother and sister. Plaintiff still resides at this address. Plaintiff and Defendant Vaughn continued their homosexual relationship. Plaintiff's wife called Defendant Miller on or about January 1, 1985, asking her to make Defendant Vaughn leave her husband alone.

Defendant Vaughn was a member of the Church of Christ. Plaintiff and his wife were members of the Church of Christ.

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Defendant Vaughn placed his membership at the Macon Road Church of Christ, the same church which Plaintiff and his wife had attended for over twenty five (25) years. The Plaintiff's wife and children, the Freeman Street and Bowen Circle neighbors, many members of the Macon Road Church of Christ, and several members of Defendant Vaughn's family knew of the homosexual affair between Plaintiff and Defendant Vaughn. On or about September 30, 1985, Defendant Vaughn's mother, Alice Maxine Dorris, called Plaintiff's wife asking her to quit spreading rumors about her son being gay. Plaintiff's wife told Defendant Vaughn's mother that her son and Plaintiff were, in fact, involved in a homosexual affair.

Defendant Vaughn denied to his family that he and Plaintiff were in such a relationship. The affair continued between Defendant Vaughn and Plaintiff until on or about September 1, 1985, with no problems. On or about that date Defendant Vaughn learned Plaintiff's wife was going to subpoena him as a witness in her divorce proceeding. Defendant Vaughn asked Plaintiff to settle out of court with his wife where he would not be forced to testify about the homosexual relationship. At about the same time Plaintiff and Defendant Vaughn were arguing over Defendant Vaughn volunteering for a Job related school in Kansas. On or about September 1, 1985, as Plaintiff and Defendant Vaughn argued about the divorce matter and Defendant going to school Plaintiff told Defendant Vaughn that if he was asked about the homosexual relationship during the divorce trial that Plaintiff would admit to it. Defendant Vaughn told Plaintiff that he would deny it and it would be Defendant's word against Plaintiff's. On or about September 15, 1985, Defendant Vaughn left for Kansas to attend school. During this three week period Plaintiff and Defendant talked daily. On or about September 20, 1985, Plaintiff taped a conversation between himself and Defendant Vaughn where sexual matters were discussed. Plaintiff told Defendant shortly thereafter that Plaintiff

had made a tape of Plaintiff and Defendant discussing sexual matters.

On or about October 5, 1985, Defendant returned from his schooling. Plaintiff and Defendant continued in their homosexual relationship as it was prior to September 1, 1986. On or about November 9, 1985, Defendant Vaughn asked Plaintiff to buy a computer from a former Navy friend, Bob Gregor, who was then selling computers out of his home. On or about November 9, 1985, Defendant Vaughn and Plaintiff went to Gregor's home where Plaintiff bought a computer to please Defendant Vaughn.

The homosexual relationship between Defendant Vaughn and Plaintiff continued to be peaceful until on or about February 1, 1986. Plaintiff's divorce trial had been scheduled on or about March 1, 1986. Plaintiff and Defendant Vaughn were again arguing about Plaintiff settling out of court with his wife. Defendant Vaughn was served with a subpoena on or about February 10, 1986, to appear as a witness in the divorce trial between Defendant and his wife.

15. That on or about February 1, 1986 Plaintiff had been employed with the United States Postal Service for approximately twenty five (25) years. Plaintiff had considerable amount of funds vested toward the Civil Service Retirement Program. Plaintiff along with his wife owned two houses and Plaintiff had a third interest in another house with his brother and sister. Plaintiff stood to inherit from his 100 year old aunt's estate.

16. On or about February 1, 1986, Defendants Walls and Miller hired Defendant Black to obtain some of Plaintiff's assets in the name of Defendant Vaughn. Defendant Vaughn agreed to let Defendants Walls and Miller sue Plaintiff in his name and also gave them information about his relationship with Plaintiff.

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17. On or about February 6, 1986, Defendant Black filed a Complaint For Injunction and requested a Temporary Restraining Order. On or about February 6, 1986, Defendant Black conspired with Defendants Lewis and Robertson for the matter to be assigned to Defendant Lewis' Part 2 of Chancery Court. Defendant Robertson did not act on the Temporary Restraining Order until February 7, 1986.

18. Defendant Lewis approved Defendant Black's request for a Temporary Retraining Order and a fiat was ordered on February 7, 1986. Defendant Black had requested and Defendant Lewis had approved a Temporary Restraining Order which did not conform to the statutes of the State of Tennessee. On or about February 6, 1986, Defendant Black gave written orders for the Sheriff's Department to serve this Temporary Restraining Order upon Plaintiff at his place of employment between the hours of 7:30 a.m and 4 p.m. Defendants Black, Walls and Miller wanted this Temporary Restraining Order violated; they want it served during the business hours of Defendant Vaughn's employer.

19. On February 6, 1986, at or about 2:15 p.m. Plaintiff was called to an office on the main floor of the U.S. Post Office, 555 South Third Street, Memphis, Tennessee. Defendant J.J. Henry served Plaintiff with a Complaint For Injunction. Plaintiff asked Defendant Henry where he signed. Defendant Henry stated that Plaintiff did not sign therefore Plaintiff turned and walked out of office as Defendant Henry started to write on a paper. Defendant Henry never read to Plaintiff or served Plaintiff with a copy of the Temporary Restraining Order. The Temporary Restraining Order was brought to the Plaintiff some fifteen (15) minutes later in a sealed Post Office envelope by Post Office Clerk Carol Diffee.

20. On February 7, 1986, at approximately 2:20 p.m. Plaintiff violated the Temporary Restraining Order. On or about February

19, 1986, Defendant Black submitted an Amended Complaint asking for Plaintiff to be found in Contempt of Court and also asked for two hundred and fifty thousand dollars damages in the name of Defendant Vaughn. Defendants Black, Walls and Miller wanted Plaintiff to be imprisoned to increase the amount of damages they could recover. Defendants Black, Walls and Miller requested unliquidated damages for injury to Defendant Vaughn in the original Complaint For Injunction and set a high dollar amount in the Amended Complaint. Requesting unliquidated damages for injuries to person, property or character, involving unliquidated damages in chancery court violates the statutes of the State of Tennessee.

21. On or about February 20, 1986, Plaintiff through his attorney of record challenged chancery court and Defendant Lewis' jurisdication in the matter. On or about March 27, 1986, Defendant Lewis denied Plaintiff's Motion to Dismiss taking jurisdiction over the matter. On or about April 29, 1986, Plaintiff requested of Defendant Lewis the right to make an interlocutory appeal to the Tennessee Appellate Court in the matter of jurisdiction. Defendant Black in his answer on or about May 15, 1986, requested Defendant Lewis not honor this request based upon theory that "No irreparable injury will result from the denial of the interlocutory Appeal;". On or about May 21, 1986, Defendant Lewis agreed with Defendant Black and the request for an interlocutory appeal was denied.

22. On or about August 1, 1986, Defendant Vaughn had his minister, Paul Eubanks, of the Orange Park Florida Church of Christ write Robert Brown, minister of the Macon Road Church of Christ, Memphis, Tennessee, telling him that Defendant Vaughn thought the suit was wrong and to ask Plaintiff if he would drop his cross complaint against Defendant Vaughn. Defendant Vaughn could not ask Defendant Black to approach attorney for Plaintiff about dropping suit because Defendant Walls and Defendant Miller

had hired Defendant Black and the suit against Plaintiff was theirs. Defendants Walls and Miller did not want the suit dropped.

23. Defendant Vaughn and Plaintiff talked telephonically for approximately two months, August and September, 1986, discussing dropping the lawsuit. Defendant Vaughn told Plaintiff that Defendant Black was to get a third of any damages received from Plaintiff and a half of any damages received if the matter was appealed to a higher court. Defendant Vaughn and Plaintiff agreed to drop lawsuit on or about October 1, 1986. Defendant Vaughn and Plaintiff were to remain friends with Defendant Vaughn living in Florida and Plaintiff remaining in Memphis, Tennessee.

24. On or about October 1, 1986, Defendant Vaughn wrote Defendant Black and Plaintiff wrote his attorney instructing them to drop the lawsuits. On or about October 1, 1986, Defendant Black involved a Tennessee Civil Court Rule requesting a trial date be assigned within ten (10) days. On or about October 1, 1986, Plaintiff's attorney asked defendant Black about letter from Defendant Vaughn requesting Defendant Black drop the lawsuit. Plaintiff's attorney was told by Defendant Black that he had received the letter from Defendant Vaughn but that he and Defendants Walls and Miller did not want to drop the lawsuit.

25. On or about October 1, 1986, Defendant Vaughn quit calling Plaintiff. Plaintiff could not find out from Defendant Vaughn why Defendants Black and Walls would not drop the lawsuit. Plaintiff became aware on or about October 1, 1986 that the lawsuit filed against him was controlled by Defendants Walls, Miller and Black and not by Defendant Vaughn. Defendant Black made in one of his pleadings the statement that Plaintiff attempted to bribe Defendant Vaughn to drop lawsuit. Plaintiff had on or about February 15, 1986, left money on Defendant Vaughn's door at 829 Freeman Street in order that he could pay utility bill therefore not

requiring Defendant Vaughn to move. Defendant Vaughn has testified in a deposition and also in the trial that he did not tell Defendant Black that Plaintiff attempted to bribe him. Defendant Black made statements in his pleading which were not made in good faith. Defendant Black used the courts for himself and Defendants Walls and Miller. Defendant Black did not represent Defendant Vaughn.

26. That on or about October 7, 1986, Plaintiff withdrew his offer to drop his cross complaint and Plaintiff's attorney filed a Notice To Take Deposition of Defendant Vaughn. Shortly thereafter Defendant Vaughn took control of the matter when he learned he must come to Memphis to give a deposition. On or about October 20, 1986, Defendant Vaughn insisted that Defendant Black make the offer to drop the lawsuit if Plaintiff would drop his cross complaint.

27. That on or about October 27, 1986, Plaintiff's attorneys of record, Richard J. Ryan and Richard J. Ryan, Jr., withdrew as Plaintiff's counsel because Plaintiff would not drop his cross complaint. On or about October 30, 1986, Plaintiff notified Defendant Lewis that he would represent himself, Pro Se, in the matter.

28. Trial date for the matter was set for December 8, 1986. Defendant Lewis did not grant Plaintiff a fair trial on that date. Defendant Lewis denied Plaintiff the right to question Defendant Henry concerning service of the Temporary Restraining Order served on February 7, 1986. Defendant Lewis found Plaintiff guilty of outrageous conduct for violating the Temporary Restraining Order and ordered a judgment of Thirty Thousand Dollars ($30,000.00) for Defendants Walls and Miller in the name of Defendant Vaughn. Defendant found Plaintiff guilty of Contempt of Court and sentenced Plaintiff to ten (10) days in the Shelby

County Correctional Center. Defendant Lewis did not address Plaintiffs cross complaint on the day of the trial, December 8, 1986. Defendant Black requested at the trial that Plaintiff be found in Contempt of Court.

29. On January 5, 1987, Plaintiff entered Shelby County Correctional Center and served ten (10) days. The Defendants, and each of them, knew that finding the Plaintiff in Contempt of Court would result in the Plaintiff being incarcerated for an unduly long period of time. As the results of this incarceration Plaintiff was fingerprinted, a "mug shot" taken and he was incarcerated for ten (10) days during which time the Plaintiff suffered embarrassment, humiliation and great mental stress not only because of the incarceration, but because his co-workers, peers and family were aware of his incarceration, and further, that he was in physical danger from other inmates due to the homosexual nature of the matter.

30. That on or about December 8, 1986 Richard J. Ryan, Jr. again became Plaintiff's Attorney of Record. That on or about December 31, 1986, Plaintiff made a motion to Amend Judgment And For Stay Of Jail Time. Defendant Black in his Answer to Defendant's Motion For Amendment Of Judgment asked Defendant Lewis not to stay Plaintiff's jail time. Defendants Black, Walls, and Miller wanted Plaintiff to be imprisoned.

31. That on or about March 16, 1987, Plaintiff filed a Notice of Appeal in the matter. That on or about April 14, 1987, Plaintiff was required by Defendant Robertson, as a Special Chancellor, to give a Deed of Trust to Chancery Court for his property at 857 Bowen Circle in order to have the right to appeal the jurisdiction and judgment of the matter to the Court Of Appeals of Tennessee, Western Section At Jackson. On or about November 2, 1987 Plaintiff was required to pledge additional collateral of Twenty-

Five Thousand dollars ($25,000.00) which represented a partial distribution of his Aunt's estate.

32. On or about February 26, 1988, The Court of Appeals of Tennessee, Western Section At Jackson issued an opinion in the matter. This court reversed the judgment. The court stated:

> "Once an objection has been made, the subject matter jurisdiction is taken away, and the Chancellor *must dismiss* the action."

33. The Court of Appeals of Tennessee, Western Section At Jackson also stated in its opinion that:

> "The Costs of this appeal and in the trial court are taxed to the appellee, for which execution mar issue if necessary.

Defendant Miller paid Plaintiff's attorney for the cost that Plaintiff incurred in making the appeal in this matter.

34. On or about January 4, 1989, Defendants Black, Walls and Miller filed suit in Circuit Court, Shelby County, Tennessee stating the cause of action as the violation of the Temporary Restraining Order. Plaintiff can find an attorney to represent him in the matter in Circuit Court but cannot find an attorney to represent him in the matter before this Court therefore the reason for Plaintiff acting Pro Se in the matter.

35. That the actions of Defendant Henry were taken pursuant to a defacto policy of the Shelby County Sheriff's Department and the Shelby County Government which permitted illegal service of process.

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36. That the actions of the Shelby County Election Commission and the Shelby County Government were taken pursuant to a defacto policy of certifying any practicing attorney, not learned in the laws of the State of Tennessee, to run for the position of Chancellor.

37. That the Shelby County Government for a substantial period of time prior to February 7, 1986, knew and approved of the defacto policies which resulted in malicious prosecution, false imprisonment, unfair trial and illegal seizure of property

38. That the actions of the State of Tennessee were taken pursuant to a defacto policy of granting a license to any attorney to practice law in the State of Tennessee. This defacto policy allows the granting of license to attorneys to practice law who do not uphold the laws of the State of Tennessee. That the actions of the State of Tennessee were taken pursuant to a defacto policy of swearing in any attorney duly elected as a Chancellor. This defacto policy allows for attorneys not learned in the laws of the State of Tennessee to serve as Chancellor in the Chancery Court.

39. The actions of the Defendants Lewis, Henry, Black, and Robertson as aforesaid were committed in the course and scope of their employment and under color of law, and directly and proximately caused the above described injuries and losses to the Plaintiff.

40. The actions of the Defendants Black, Vaughn, Miller and Walls as aforesaid were committed as individuals and directly and proximately caused the above described injuries and losses to the Plaintiff. That Defendants Walls and Miller hired Defendant Black who operating under color of laws conspired directly or proximately caused the above described injuries and losses to the

Plaintiff. That Defendant Vaughn allowed his name to be used by Defendants Walls and Miller to hired Defendant Black who operating under color of laws conspired directly or proximately caused the above described injuries and losses to the Plaintiff.

41. Plaintiff reiterates, reaffirms and relies upon each and all the the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Henry and Robertson were acting under color of laws conspired, planned, schemed and acted in concert to deny, violate or otherwise deprive or attempt to deprive the Plaintiff of the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments of the United States Constitution.

42. Plaintiff reiterates, reaffirms and relies upon each and all of the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Robertson, Vaughn, Miller, and Walls individually conspired, planned, schemed and acted in concert to deny, violate or otherwise deprive or attempt to deprive the Plaintiff of the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

43. Plaintiff reiterates, reaffirms and relies upon each and all of the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Henry and Robertson acting under color of laws and Defendants Black, Vaughn, Miller and Walls acting generally and individually did deny, violate or otherwise deprive or attempt to deprive the Plaintiff of the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution, in that they maliciously prosecuted, falsely imprisoned, interfered with his right to a fair trial, illegally seized property and intentionally inflicted emotional distress to the Plaintiff, all of which resulted in losses and damages to the Plaintiff.

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WHEREFORE PREMISES CONSIDERED, the Plaintiff respectfully demands the following relief, jointly and severally, against all of the Defendants:

1. That proper process issue upon each of the Defendants requiring them to answer this Complaint.

2. That upon a trial of this cause, Plaintiff be awarded actual and compensatory damages in the amount of Ten Million Dollars ($10,000,000.00).

3. That upon a trial of this cause, Plaintiff be awarded punitive damages in the amount of Fifty Million Dollars ($50,000.000 00)

4. That Plaintiff be awarded costs pursuant to 42 USC 1988.

5. That Plaintiff demands a jury to try the issues herein when joined.

6. For all such other, further and general relief to which the Plaintiff may be entitled in the premises.

Respectfully submitted,

s/ William N. Odom, Jr.
WILLIAM N. ODOM, JR.
857 Bowen Circle
Memphis, TN 38122
(901) 323-2500

APPENDIX F — EXCERPT OF TEMPORARY RESTRAINING ORDER DATED FEBRUARY 27, 1986

TO *N. Odom, Jr.*

You are hereby notified that application for *Temporary Restraining Order and Temporary Injunction* will be heard before the Chancery Court, Part 2, on the 27, day of *Feb,* 1986 at *9:00* o'clock *A.M* as prayed for in the Complaint filed in this cause, a copy of which accompanies this writ and upon which Fiat has been granted.

HEREIN FAIL NOT.

Witness, John C. Robertson, Clerk and Master of said Court, at office, this *7* day of *Feb,* 1986

JOHN C. ROBERTSON, C & M.
by s/ Joyce Avery
Deputy C. & M.

RESTRAINING ORDER

In the meantime *you are hereby restrained from carrying out the threats set forth in the attached Complaint and that you are to forthwith deliver to the Clerk of this Court the taped telephone recording referred to in said Complaint.*

until further Order of this Court to the contrary

s/ George T. Lewis
Chancellor
Chancery Court, Shelby County, Tennessee
Date: 2-7-86 at 9:15 A.M.

APPENDIX G — EXCERPT FROM RULE 65, INJUNCTIONS, TENNESSEE COURT RULES, ANNOTATED

* * *

65.02. Requisites of Restraining Order or Injunction — Parties Bound. — (1) Every restraining order of injunction shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act restrained or enjoined.

(2) Every restraining order or injunction shall be binding upon the parties to the action, their officers, agents and attorneys; and upon other persons in active concert or participation with them who receive actual notice of the restraining order or injunction by personal service or otherwise.

* * *

APPENDIX H — PERSONAL NOTE TO THE SHERIFF FROM CHARLES G. BLACK

Law Offices
Charles G. Black
One Hundred North Main Building
Memphis, Tennessee 38103 Telephone 901-525-4618

PERSONAL NOTE TO TH E SHERIFF:

The true name of the Defendant is William N. Odom, Jr. His home address is 857 Bowen Circle, Memphis, Tennessee, 38122. He is employed and may be served with proces at The United States Postal Service, Procurement Division 555 S. Third Street (in basement), Memphis, Tennessee. His work hours are from 7:30 a.m. to 4:30 p.m.

Because of the nature of this lawsuit, we have abbreviated the names of both the Plaintiff and the Defendant, but please have Mr. Odom identify himself and serve him with this Summons at his place of business.

CHARLES G. BLACK,
Attorney for Plaintiff

APPENDIX I — EXCERPTS FROM TRANSCRIPT OF HEARING IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE, NO. 92959-II DATED DECEMBER 8, 1986, VOLUME II, PAGES 27-38

DIRECT EXAMINATION
BY MR. ODOM:

Q. What is your full name, please?

A. Carol Ray Diffee.

Q. Where are you employed?

THE COURT: What is the name?

THE WITNESS: Carol Diffee. Hickory Hill Post Office.

Q. (By Mr. Odom) And what is your job title?

A. Clerk.

Q. What duties were you performing on September 7th, 1986?

A. I was — on September 7th?

Q. 1986, uh-huh.

MR. BLACK: I didn't hear the question or the answer.

A. Window clerk, I believe.

MR. BLACK: I still can't hear. What was the question and what was the answer?

[28] (Whereupon the question above referred to was read back by the Court Reporter as follows:)

"Q. What duties were you performing on September 7th, 1986."

MR. BLACK: And what did she reply?

(Whereupon the answer above referred to was read back by the Court Reporter as follows:)

A. September 7th?

Q. Yes. A. Window clerk, I believe."

MR. BLACK: I can't hear you.

(Whereupon the answer above referred to was read back by the Court Reporter as follows:)

"A. Window clerk, I believe."

MR. BLACK: Okay.

Q. (By Mr. Odom) Prior to working at Hickory Hill Station where did you work?

A. At the main Post Office.

Q. And when did you leave the main Post Office to go to Hickory Hill?

A. June.

Q. So, you were at the main Post Office —

A. Until June.

Q. So, you wouldn't have been a window clerk? Would [29] you have been a window clerk on June — February 7th, 19 —

A. (Interposing) No, not February. In February I was at the main Post Office.

Q. And what were your duties then?

A. I was a clerk.

Q. And were you working any specific assignment?

A. I was in the Tour Superintendent's Office.

Q. And what is the Tour Superintendent's Office?

A. It's the main office on the floor.

THE COURT: Mr. Odom, what is the purpose of this? S o far I see absolutely no relevance.

MR. ODOM: I never received the temporary restraining order. She's the one that called me to the office and she's the one that brought it to me in an envelope that I would like for her —

THE COURT: (Interposing) The records show that you were served with the temporary restraining order by the Sheriff of

Shelby County, not by the Post Office.

MR. ODOM: Sir, it's in this envelope right here. Never been opened, delivered to me by this lady.

MR. BLACK: I think he's bound by — I don't think he can attack the integrity of the Marshal's service.

THE COURT: Weren't you served by the Shelby County [30] Sheriff?

MR. ODOM: Sir, I was given the Complaint for the injunction. I asked the man "Where do I sign?" He said, "You don't sign." I turned around and walked out and 20 minutes later this lady brought me this envelope with this piece of paper in it that's never been opened. I was so upset I didn't know what it was. I left the Post Office that day and not until the next morning when Richard —

MR. BLACK: (Interposing) Wait a minute. We're getting completely out of order.

THE COURT: We're getting way off track here now. The record shows that the Shelby County Sheriff served you with a summons. I believe it's 2:15 p.m., isn't it?

MR. BLACK: I'm reading from the return of the summons, "Came to hand 7 February 1986 and executed 7 February 1986 at 2:15 p.m. by reading the writ and leaving him a copy." Signed by the Sheriff of Shelby County and Sheriff of this Court. I can t read the Sheriff 's writing. But he can't — how can he impeach the integrity of —

THE COURT: (Interposing) Are you denying that [31] the

Sheriff of Shelby County served you with notice of this lawsuit?

MR. ODOM: He served me with the Complaint for injunction but he never served me with the temporary restraining order. He never read it to me.

MR. BLACK: It's the same thing. The restraining order is in the Complaint.

THE COURT: Reading from the return — do you deny the Sheriff's return?

MR. ODOM: Yes, sir, I do.

THE COURT: Well, the law on that is that this is presumed to be correct. Now, if you want to call him —

MR. ODOM: (Interposing) I've got him called, sir.

THE COURT: But until you can show that that letter has something to do with this lawsuit, it's not admissible.

MR. ODOM: Well, when will I be able to prove or —the contempt part of it?

THE COURT: The Court advised you, Mr. Odom, when this matter was up before that you ought to get a lawyer —

MR. ODOM: (Interposing) All right, sir.

THE COURT: (Continuing) for this kind of advice [32] and it's not my job —

MR. ODOM: (Interposing) All right, sir, I don't need —

THE COURT: (Continuing) to advise you how to try the lawsuit. I'll try to keep somebody from taking advantage of you but so far there's been no attempt to do that.

MR. BLACK: I haven't tried to take advantage of him.

MR. ODOM: No further questions.

MR . BLACK: No questions. (Witness excused)

THE COURT: Next witness.

MR. ODOM: Mr. Henry.

MR. BLACK: We're going to get in an almost impossible position. This is his proof in his counter-Complaint and in defense of my lawsuit. These are his witnesses.

THE COURT : Yes, sir, I understand .

DEPUTY: Mr . Henry is on his way up . He hasn't made it up here yet.

MR. BLACK: Well, tell me what he's going to testify and I'll stipulate to it probably.

MR. ODOM: I have a summons served on me signed [33] by him showing February 27th, 1986 and his service of the same documents in the folder shows he served it on March 3rd, 1986.

THE COURT: There's an earlier service on February —

MR. ODOM: (Interposing) This is the same document, Your Honor.

MR. BLACK: That's an amended Complaint. He's talking about the amended Complaint.

THE COURT: That's the amended Complaint. The original Complaint shows it was served on February 7th.

MR. ODOM: This right here that I've got in my hand is the amended Complaint served —

THE COURT: (Interposing) I'm talking about the original Complaint. It shows that it was served at 2:15 p.m.

MR. BLACK: February 7th, yes, sir.

THE COURT: Show him service was executed.

MR. BLACK: I've given it back to the Court. May I approach the bench?

THE COURT: All right.

DEPUTY: He's on his way now, Your Honor.

MR. ODOM: Your Honor, what I'm saying is the man —

[34] THE COURT: (Interposing) We're talking about two different things. You're talking about the amended Complaint and Mr. Black will show you there in a minute where the Sheriff has returned service of the original Complaint at 2:15 p.m. on February 7th, I think.

Appendix I

(Document passed to Mr. Odom)

MR. BLACK: The Court asked me to show you this and I'm showing it to you.

MR. ODOM: I've looked at it.

THE COURT: All right, sir. Let the Sheriff go on and testify and he can be relieved.

J. J. HENRY

The witness, after being first duly sworn, testified as follows, to-wit:

MR. ODOM: Can he look at the record on the summons he served me on the amended Complaint?

THE COURT: It's up to you to ask him the questions if you want to. If not, we'll let Mr. Black ask the questions.

DIRECT EXAMINATION
BY MR. ODOM:

Q. What is your name, please, sir?

A. J. J. Henry.

Q. And you're employed?

[35] A. Shelby County Sheriff's Department

Q. Sir, can you identify the document that you're now looking at?

Appendix I

A. This is the summons.

Q. What date was it issued by Ms. Sisson for the Deputy Clerk and Master?

A. It was issued on the 19th of February.

Q. And what date did you serve it on me, sir?

A. The 3rd day of March, 1986.

MR. ODOM: I'd like for Mr. Black to look at this, sir, and —

MR. BLACK: (Interposing) I don't need it.

MR. ODOM: Can I introduce this as evidence, please?

MR. BLACK: It's part of the technical record in this case. You don't have to introduce it.

MR. ODOM: Mine is not like this, sir.

THE COURT: There are two of them.

MR. ODOM: No, sir, this is the same one, on the 19th. This is the same one on the 19th, Your Honor.

MR. BLACK: Your Honor, here is the amended Complaint that was filed on February, 1985, and that was the amended Complaint. I don't know whether [36] he served this but in the meantime on February 7th, the original injunction and

restraining order was issued. And now he's trying to say that he didn't know that he was under injunction which is a fantastic —

MR. ODOM: (Interposing) No, I'm not saying that —

MR. BLACK: (Continuing) revelation here after all this proof that he's flaunted the orders of this Court by ignoring this Court.

MR. ODOM: Your Honor, the Court has said that I can't question the integrity of the Sheriff's Department that I received the document on the 7th. I've got a document here that shows he delivered it to me on a certain date but he's got it on there on another date.

THE COURT: There is a supplemental summons. There was an original summons, though, that antidates that.

MR. ODOM: All right, sir. No further questions.

MR. BLACK: No questions. Yes, maybe I'd better do it. This is a contempt proceeding, not only civil but criminal contempt proceeding, and if Your Honor will look on the restraining order, it was filed on — at 9:15 on February 7th [37]and served upon this gentleman on 2:15 that same afternoon and at 4:00 he called up all three of his employees and got him fired. Now he's trying to suggest that he didn't know that he was under this restraining order which is a fantastic revelation here today after all this testimony. The amended Complaint was filed on February 19th, 1985. That's what he's talking about with Mr. Henry. He didn't serve the February 7th —

THE COURT: Mr. Odom is talking about the amended Complaint. This is the original one.

THE WITNESS: That was served on the 7th day of February.

THE COURT: At 2:15?

THE WITNESS: 2:15.

THE COURT: And whose signature is that?

THE WITNESS: That 's mine.

THE COURT: That's yours?

THE WITNESS: Yes, Your Honor.

THE COURT: You were the one that served this paper?

THE WITNESS: Yes, sir.

THE COURT: All right, sir. Thanks.

[38] CROSS-EXAMINATION
BY MR. BLACK:

Q. And when you said you read it to the Defendant, you read it to him, didn't you?

A. Yes sir.

Q. That's what your signature says, isn't it?

A. That's right.

Appendix I

THE COURT: Anything further?

MR. ODOM: No.

THE COURT: Any further questions, Mr. Black?

MR. BLACK: No, sir.

(Witness excused)

APPENDIX J — EXCERPT OF BRIEF OF DEFENDANTS, J. J. HENRY; JOHN C. ROBERTSON, AND SHELBY COUNTY GOVERNMENT TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED FEBRUARY 3, 1992

* * *

The only factual allegations regarding Henry are: he was a Deputy Sheriff; and he served Odom with a copy of the Complaint. Odom complains that Henry did not read or deliver the Temporary Restraining Order to him. However, Odom admits that he walked out of the office while Henry was attempting to serve the Order, and admits that the Order was later delivered to him by a Post Office employee. The Order was not read or delivered to Odom because he walked out during the service process. Odom cannot be heard to complain, since his own conduct prevented Henry from delivering the Order to Odom. Odom admits he received the Order, which he apparently read because he admits to violating the Order.

* * *

No. 92-796

Supreme Court, U.S.
FILED
DEC 2 1992
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

v.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; and STATE OF TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF IN OPPOSITION

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21pp

QUESTION PRESENTED FOR REVIEW

Dissatisfied with Petitioner's Questions Presented for Review, these Respondents submit that the Question Presented for Review is whether the District Court erred in dismissing the Complaint against the Respondents, J. J. Henry, John C. Robertson, and Shelby County Government.

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF IN OPPOSITION

SUMMARY OF THE ARGUMENT

1. The issue in this case is not whether a *pro se* citizen has the right to seek relief in the Federal Courts for an alleged constitutional violation. The issue in this case is whether the Complaint states a claim upon which relief can be granted.

2. The Complaint was filed on February 23, 1989, against a Chancellor, the Chancery Court Clerk, a

deputy sheriff, Shelby County, the State of Tennessee, three private citizens and their attorney. The Complaint contains conclusory allegations of a conspiracy to violate Petitioner's civil rights under 42 U.S.C. §§ 1983, 1985, and 1988, and seeks monetary damages. The Complaint stems from a Chancery Court suit for outrageous conduct and injunctive relief. The Complaint alleges that Chancery Court did not have subject matter jurisdiction. An injunction was issued in the Chancery suit which Petitioner violated. The Petitioner was found in contempt of court and was sentenced to ten (10) days in the Shelby County Correction Center and was also ordered to pay a judgment of $30,000. Petitioner appealed to the Tennessee Court of Appeals, which ruled that Chancery Court did not have jurisdiction because the claim sought unliquidated damages. The Chancery suit was remanded for further proceedings.

3. At all times material thereto, Respondents, Robertson and Henry, were acting in their official capacities and were entitled to either a judicial, quasi judicial, or good faith immunity. It is well settled that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or Constitutional rights of which a reasonable person would have known". Sheriffs and their deputies are immune when serving process at the direction of a court, so long as the writ or process appears valid on its face.

4. Shelby County is not a legal entity subject to suit and is not a "person" under 42 U.S.C. §1983 and does not fall within the exception established in the *Monell* case. There are no factual allegations in

the Complaint which establish that the County had a custom or policy to discriminate.

5. There are no allegations in the Complaint which show a class-based invidiously discriminatory animus behind the alleged conspirators' actions. It is well established that conclusory allegations of conspiracy, such as those set forth in the Complaint, unsupported by any factual assertions, will not withstand a motion to dismiss, even if the conspiracy claims are filed by a *pro se* plaintiff.

6. The Complaint was filed on February 23, 1989, and is barred by the Tennessee one (1) year Statute of Limitations contained in T.C.A. § 28-3-104. The last alleged overt act of any of the alleged conspirators occurred on November 2, 1987, when Petitioner posted collateral to secure his right to appeal the Chancery Court decision to the Tennessee Court of Appeals.

ARGUMENT

These Respondents submit that the Court of Appeals was correct in affirming the action of the District Court in dismissing Petitioner's claim for damages. In its Order, the Court of Appeals stated as follows:

> Upon review, we conclude that the District Court properly determined that Odom failed to state a claim. Construing the Complaint in the light most favorable to Odom and accepting his factual allegations as true, we determine that Odom undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. (Citation omitted).

1. Question Presented for Review:

The issue in this case is not whether a *pro se* citizen has the right to seek relief in the Federal Courts for an alleged Constitutional violation. The issue in this case is whether Odom's Complaint states a claim upon which relief can be granted. Odom states at page 6 of his Petition that:

> The rulings in this matter made by the United States District Court for the Western District of Tennessee, Western Division, and the United States Court of Appeals for the Sixth Circuit would allow no *pro se* citizen under their jurisdiction to have access to the federal courts.

Odom cites *Haines v. Kerner, et al.*, 404 U.S. 519 (1972) as authority for this statement. This case held only that *Haines'* Complaint contained sufficient factual allegations to justify an opportunity to offer proof. Such is not the case with Odom's Complaint. Odom does not state sufficient facts to justify an opportunity to offer proof. The District Court never ruled that a *pro se* citizen did not have a right to seek relief in the Federal Courts.

2. Allegations in Complaint:

It is material to the consideration of the question presented in this case to review Odom's allegations in the Complaint in detail. The Complaint was filed on February 23, 1989, against a Shelby County Chancellor, George T. Lewis ("Lewis"); the Shelby County Chancery Court Clerk, John C. Robertson ("Robertson"); a Shelby County Deputy Sheriff, J. J. Henry ("Henry"); Shelby County Government ("the County"); State of Tennessee ("the State"); three pri-

vate citizens, Michael B. Vaughn ("Vaughn"), Ruby I. Miller ("Miller") and Lillian V. Walls ("Walls"); and their attorney, Charles G. Black ("Black").

Odom's civil rights claim stems from Vaughn's Chancery Court action for outrageous conduct and injunctive relief filed by Black. The nature of the Chancery Court action as set forth in the Complaint is as follows:

Prior to 1984, Vaughn had been in Bankruptcy, and Walls and Miller were his self-appointed financial trustees. On or about August 20, 1984, Vaughn and his children moved into a house located at 829 Freeman Street, Memphis, Tennessee, which was located next door to Odom's house. Shortly after Vaughn moved into said house, he and Odom entered into a homosexual relationship and Odom began to pay extra expenses of Vaughn. Odom lived in his house with his wife and two sons. On or about November 14, 1984, Odom told his wife of his relationship with Vaughn, and Odom's wife moved out of the house and sued for divorce.

On or about September 1, 1985, Vaughn learned that Odom's wife was going to subpoena him as a witness in her divorce proceedings. Vaughn asked Odom to settle out of Court so that Vaughn would not be forced to testify about the homosexual relationship. Odom and Vaughn argued, and Odom told Vaughn that if he was asked about the homosexual relationship during the divorce trial, he would admit to it. Vaughn told Odom that he would deny it and it would be his word against Odom's. Vaughn had previously denied to his family that he and Odom were engaged in a homosexual relationship.

Odom threatened to tell Vaughn's family and employer about their affair and taped a conversation between himself and Vaughn wherein sexual matters were discussed. Odom's divorce trial had been scheduled to start on March 1, 1986, and Vaughn was served with a subpoena to appear as a witness. On or about February 6, 1986, Black filed Vaughn's Complaint in Chancery Court for outrageous conduct and injunctive relief. The Complaint was assigned to Lewis' Court. Black requested a Temporary Restraining Order to prohibit Odom from carrying out his threats and to require Odom to deliver the tapes to Lewis. Lewis granted Black's Motion for a Temporary Restraining Order which was issued on February 7, 1986.

On or about February 7, 1986, Odom was called to an office on the main floor of the U. S. Post Office in Memphis, Tennessee, at which time Henry served Odom with the Temporary Restraining Order. Odom asked Henry where he should sign and Henry stated that Odom need not sign; whereupon Odom turned and walked out of the office as Henry started to write on a paper. Henry never read to Odom nor served Odom with a copy of the Temporary Restraining Order. The Temporary Restraining Order was brought to Odom some fifteen (15) minutes later in a sealed post office envelope by a post office clerk. Odom violated the Order on February 7, 1986, by carrying out his threats to tell Vaughn's family and employer about the homosexual relationship.

On or about February 19, 1986, Black filed an Amended Complaint asking that Odom be found in contempt of Court, and also asking for $250,000 damages. On February 20, 1986, Odom, through his

attorney of record, filed a Motion challenging Chancery Court jurisdiction. On March 27, 1986, Lewis denied Odom's Motion, and on May 21, 1986, denied Odom's request for an Interlocutory Appeal.

The Chancery Court trial was held on December 8, 1986, and Lewis found that Odom violated the Temporary Restraining Order and was guilty of outrageous conduct. Lewis awarded Vaughn a Judgment of $30,000 and sentenced Odom to ten (10) days in the Shelby County Correction Center for contempt of Court. On January 5, 1987, Odom entered the Shelby County Correction Center and served ten (10) days.

On or about March 16, 1987, Odom filed a Notice of Appeal and was required by Robertson, as a Special Chancellor, to give a Deed of Trust for his property at 857 Bowen Circle, in order to appeal. On or about November 2, 1987, Odom was required to pledge additional collateral of $25,000, which represented a partial distribution of his aunt's estate. On or about February 26, 1988, the Court of Appeals of Tennessee, reversed the Judgment. On or about January 4, 1989, Black, refiled Vaughn's suit in the Circuit Court of Shelby County, Tennessee, where it is still pending.

3. Robertson and Henry possess either judicial, quasi judicial, or good faith immunity which bars Odom's damage claims against them.

Robertson and Henry are both governmental officials of Shelby County, Tennessee, and were at all times relevant thereto acting in their official capacities with regard to all allegations made by Odom. As such, they are entitled to either a judicial, quasi judicial or good faith immunity. *Panko v. Rodack*, 606 F.2d 168 (7th Cir. 1979), cert. den., 444 U.S. 1081,

100 S.Ct. 1034, 62 L.Ed.2d 765 (1980); *Seldon v. Goodman*, 487 F.Supp. 30 (S.D. N.Y. 1980); *Raitport v. Provident Natl. Bank*, 451 F.Supp. 522 (E.D. Pa. 1978).

The only factual allegations in the Complaint regarding Robertson are: he was the Chancery Court Clerk; he assigned Vaughn's suit to Lewis; and he required Odom to post an appeal bond. Black's suit was filed in Chancery Court and it was assigned to Lewis in a routine and normal manner. There are no allegations of any improper motive in the case being assigned to Lewis. Cases must be assigned or the judicial process would cease to function. It is absurd for Odom to contend that the assignment of a suit can be the basis of a civil rights violation. The same can be said of the allegation that Robertson required an appeal bond. Appellate procedure is set by state law and the Clerk is merely following the law by requiring an appeal bond.

The only factual allegations in the Complaint regarding Henry are: he was a Deputy Sheriff; and he served Odom with a copy of the Complaint. Odom alleges that Henry did not read or deliver the Temporary Restraining Order to him. However, Odom alleges that he walked out of the office while Henry was attempting to serve the Order, and alleges that the Order was later delivered to him by a Post Office employee. Odom alleges that the Order was not read or delivered to him because he walked out during the service process. Odom alleges that he received the Order, which he apparently read because he admits to violating the Order.

It is well settled that "government officials performing discretionary functions generally are shielded

from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818; 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). *See, Hall v. Medical College of Ohio at Toledo*, 742 F.2d 299, 307, 308 (6th Cir. 1984), *cert. den.*, 105 S.Ct. 796 (1985); *Hall v. United States*, 704 F.2d 246, 249, 251 (6th Cir. 1983), *cert. den.*, 464 U.S. 1002 (1983).

The typical Court Clerk performs "ministerial" rather than "judicial" functions and is entitled to a qualified immunity. *Marty's Adult World, Inc. v. Guidia*, 453 F.Supp. 810 (D.C. Conn. 1978); *Barnes v. Dorsey*, 480 F.2d 1057 (8th Cir. 1973); *Norwood v. Solomon*, 431 F.Supp. 380 (E.D. Mo. 1977); *McGhee v. Moyer*, 60 F.R.D. 578 (D.C. Va. 1973); *Morrison v. Jones*, 607 F.2d 1269 (9th Cir. 1979); *Lowe v. Letsinger*, 772 F.2d 308 (7th Cir. 1985).

Sheriffs and their deputies, as well as constables and marshals, are immune when serving process at the direction of a court, so long as the writ or process appears valid on its face. *Gigliotti v. Redevelopment Authority of New Castle*, 362 F.Supp. 764 (W.D. Pa. 1973), *aff'd. without opinion*, 492 F.2d 1238 (1974); *Thompson v. Baker*, 133 F.Supp. 247 (D.C. Ark. 1955); *Toscano v. Olesen*, 189 F.Supp. 118 (S.D. Cal. 1960); *Winterhalter v. Three Rivers Motors Co.*, 312 F.Supp. 962 (W.D. Pa. 1970).

4. The County is not a legal entity subject to suit, and is not a "person" under 42 U.S.C. § 1983, and is immune from liability.

The County is not a legal entity subject to suit, and is not a "person" under 42 U.S.C. § 1983, and does not fall within the exception established in *Mo-*

nell v. Department of Social Services, 436 U.S. 658 (1978).

The only factual allegations in the Complaint regarding the County are: it oversaw the management and funding of the Shelby County Sheriff's Department and Election Commission and paid its employees, including Henry. There are no factual allegations which establish that the County had a custom or policy to discriminate against Odom because of his homosexuality, or to deny him due process or a fair trial. Absent such allegations, the County does not fall within the *Monell* exception.

Since no custom or policy is factually alleged, the County cannot be liable for the acts of its employees, because the doctrine of *respondeat superior* does not apply in Civil Rights cases. *Monell, supra*; *Jennings v. Davis*, 476 F.2d 1271 (7th Cir. 1973); and *Adams v. Pate*, 445 F.2d 105 (7th Cir. 1971).

5. Odom's claim that the Respondents conspired to deprive him of his Constitutional Rights is devoid of any factual foundation and thus fails to state a claim upon which relief can be granted.

Odom claims a violation of 42 U.S.C. § 1985. The only provision of § 1985 with any potential applicability to this case is § 1985(3) which provides for safeguarding "the equal protection of the laws, or of equal privileges and immunities under the laws."

So long as there is a class-based invidiously discriminatory animus behind the conspirators' action, § 1985(3) can be used to protect deprivation of rights owing their existence to the equal protection clause of the Fourteenth Amendment, the due process clause of that Amendment, the privileges and immunities

clauses of Article Four and the Fourteenth Amendment, to federal treaties and to federal statutes. *Cohen v. Illinois Institute of Technology*,524 F.2d 818 (7th Cir. 1975), *cert. den.*, 425 U.S. 943 (1976); *Studen v. Beebe*, 588 F.2d 560, 564 (6th Cir. 1978). Odom has not alleged facts to indicate that there is a racial, or otherwise class-based animus behind the alleged conspirators' actions. Thus, no claim has been stated under 42 U.S.C. § 1985(3).

It is well established that conclusory allegations of conspiracy such as those set forth in Odom's Complaint, unsupported by any factual assertions, will not withstand a motion to dismiss even if the conspiracy claims are filed by a pro se plaintiff. Factual allegations in support of such a claim are required. *Briscoe v. LaHue*, 663 F.2d 713, 723 (7th Cir. 1981), *aff'd. on other grounds*, 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983). *See also*, *Gutierrez v. Lynch*, 826 F.2d 1534, 1538, 1539 (6th Cir. 1987); *Chapman v. City of Detroit*, 808 F.2d 459, 465 (6th Cir. 1986); *Jaco v. Bloechle*, 739 F.2d 239, 245 (6th Cir. 1984).

Odom is apparently attempting to base his alleged civil rights claim on Lewis' lack of jurisdiction. However, Odom has alleged no facts to show that the judicial acts by Lewis were clearly outside the scope of his jurisdiction. The most that can be said is that Lewis misinterpreted a State Statute, T.C.A. § 16-11-102, when he denied Odom's Motion challenging jurisdiction. An error of law does not constitute a civil rights violation. A judge's ruling on a motion is clearly judicial in nature and is not subject to review under § 1983 because of absolute immunity for such an action. *Houghton v. Osborne*, 834 F.2d 745 (9th Cir. 1987). Therefore, even if Odom had alleged sufficient

facts to establish a conspiracy, the alleged conspiracy (lack of jurisdiction) would not establish a§ 1983 claim.

6. Odom's action is barred by the applicable Statute of Limitations.

Odom's suit, which was filed on February 23, 1989, fails to state a claim because it is barred by the Statute of Limitations. Since 42 U.S.C. § 1983 does not contain a Statute of Limitations, the Court must look to the most appropriate state law pursuant to 42 U.S.C. 1988. For claims arising in Tennessee, the most appropriate statute is the one (1) year limitation contained in T.C.A. § 28-3-104. *See, Mulligan v. Schlachter*, 389 F.2d 231, 233 (6th Cir. 1968), cited with approval in *Carmicle v. Weddle*, 555 F.2d 554, 555 (6th Cir. 1977); *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984). However, the question of when a federal cause of action accrues is a matter of federal, not state law. *Fiesel v. Board of Education*, 675 F.2d 522 (2nd Cir. 1982). A cause of action under § 1983 accrues when the plaintiff knows, or has reason to know, of the injury which is the basis of the action. *Sevier*, at p. 273. The Statute begins to run at the time the plaintiff knows of the discriminatory act, not at the point when the consequences of the act become painful. *Chardon v. Fernandez*, 454 U.S. 6, 70 L.Ed.2d 6, 102 S.Ct. 28 (1981), *reh. den.*, 71 L.Ed.2d 322, 102 S.Ct. 1042 (1982).

In the case at bar, the District Court ruled that the final act alleged by Odom occurred on November 2, 1987, when he posted collateral to secure his right to appeal. This suit was filed on February 23, 1989.

Odom's contention that the Statute did not start to run until February 25, 1988, when the Court of

Appeals ruled that Chancery Court did not have jurisdiction is not well taken. His contention in this regard is similar to the plaintiff's contention in *Sevier*, p. 272, wherein the plaintiff contended that the Statute did not begin to run until his attorney informed him that he possessed a federal claim. The Court rejected this contention and ruled that the Statute commenced to run when the plaintiff knew of the injury. Odom knew of his injury on November 2, 1987, when he posted collateral to secure his right to appeal. This date is also the last alleged overt act of any of the alleged conspirators. Therefore, this suit is time barred by T.C.A. § 28-3-104.

Rule 10 of this Court provides as follows:

> .1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) * * *

> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

* * *

The Petition for Writ of Certiorari fails to state any of the reasons set forth in Rule 10 which would justify the granting of the writ. The decision of the Court of Appeals is not in conflict with the decision of another federal court of appeals on the same question, and is not in conflict with a state court of last resort. The Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. The questions presented are not important questions of federal law which have not been settled, and the decision of the Court of Appeals is not in conflict with applicable decisions of this Court. In summary, the Petition fails to state any reason whatsoever which would justify the granting of the writ.

CONCLUSION

WHEREFORE, AND FOR ALL OF WHICH, the Respondents, J. J. Henry, John C. Robertson and Shelby County Government respectfully request that the Petition for Writ of Certiorari be denied.

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No. 92-796

In The

Supreme Court of the United States

October Term, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

vs.

GEORGE T. LEWIS, CHARLES G. BLACK, J.J. HENRY, JOHN C. ROBERTSON, MICHAEL B. VAUGHN, RUBY I. MILLER, LILLIAN V. WALLS, SHELBY COUNTY GOVERNMENT, and STATE OF TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT CHARLES G. BLACK

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QUESTIONS PRESENTED FOR REVIEW

1. Should the Court review questions presented for review by the petitioner which were not presented before the Court of Appeals for the Sixth Circuit?

2. Did the court below err in dismissing petitioner Odom's *pro se* complaint for his failure to state a claim, because the petitioner failed to plead specific factual allegations tending to show that respondent Black conspired with others alleged to have been acting under color of state law for the purpose of denying petitioner Odom's civil rights?

3. Did the court below err in determining that the petitioner Odom's claims were barred by the applicable State of Tennessee statute of limitation?

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No. 92-796

In the

Supreme Court of the United States

October Term, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

vs.

GEORGE T. LEWIS, CHARLES G. BLACK, J.J. HENRY, JOHN C. ROBERTSON, MICHAEL B. VAUGHN, RUBY I. MILLER, LILLIAN V. WALLS, SHELBY COUNTY GOVERNMENT, and STATE OF TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT CHARLES G. BLACK

OPINIONS BELOW

This petition seeks review of the judgment and order of the United States Court of Appeals for the Sixth Circuit, *William N. Odom, Jr. v. George T. Lewis, et al.*

This petition also seeks review of the judgment and order of the United States District Court for the Western District of

Tennessee, *William N. Odom, Jr. v. George T. Lewis, et al.*, Docket No. 89-2183-TUA.

The District Court dismissed the action due to the petitioner's failure to state a claim in his complaint, because several defendants, including respondent Black, were private citizens and not state actors within the meaning of 42 U.S.C. § 1983, because these state actors were entitled to immunity, and because petitioner's claims were barred by the appropriate State of Tennessee statute of limitations. The Court of Appeals affirmed the judgment of the District Court.

STATUTES INVOLVED

Tenn. Code Ann. § 28-3-104(a) provides as follows:

> *Personal Tort Actions* – (A) Actions for libel, for injuries to the person, false imprisonment, malicious prosecution, criminal conversion, seduction, breach of marriage promise, actions and suits against attorneys for malpractice whether said actions are grounded or based in contract or tort, civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes, and actions for statutory penalties shall be commenced within one (1) year after cause of action accrued.

STATEMENT OF THE CASE

Petitioner, William N. Odom, Jr., commenced a *pro se* lawsuit in the United States District Court for the Western District of Tennessee, Western Division, on February 23, 1989 against various defendants, including respondent Charles G. Black [Appendix, *infra*, at page 1a (hereinafter referred to as "__a")]. Petitioner's action against all defendants was commenced

pursuant to 42 U.S.C. §§ 1983, 1985(3), and 1988, and the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution. Petitioner also invoked pendent jurisdiction of the District Court to hear and decide additional claims arising under state law.

All of the defendants, including respondent, Charles G. Black, filed motions to dismiss for petitioner's failure to state claims against them for which relief could be granted (18a). On October 4, 1991, an order was entered by the District Court granting defendant's motion to dismiss (20a).

Petitioner then filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit. Petitioner then filed an appellant's brief with the Sixth Circuit (25a) (a copy of said brief is included in respondent's appendix to evidence the questions which were presented to the Sixth Circuit). Respondent Charles G. Black filed a brief in response to said appellant's brief, and the petitioner filed a reply brief.

The Sixth Circuit then entered an order on August 10, 1992 affirming the ruling of the District Court (38a).

SUMMARY OF THE RESPONDENT'S ARGUMENT

The petitioner has presented questions to this Court which were not presented to the Sixth Circuit. Therefore, these new questions should not be considered by this Court.

The petitioner's complaint is devoid of any specific factual allegations to show that the respondent was engaged in a conspiracy to deprive the petitioner of his civil rights.

Petitioner's cause of action is barred by the applicable State of Tennessee statute of limitations, *i.e.*, Tenn. Code Ann. § 28-3-104(a).

REASONS FOR DENYING THE WRIT

I.

THE COURT SHOULD NOT REVIEW QUESTIONS PRESENTED FOR REVIEW BY THE PETITIONER WHICH WERE NOT PRESENTED BEFORE THE COURT OF APPEALS FOR THE SIXTH CIRCUIT.

In his brief filed with the Court of Appeals Sixth Circuit (26a), the petitioner presented five questions for review.

> (1) Did the District Court fail to consider important grounds for relief? *YES* If so, what grounds?
>
> (2) Did the District Court incorrectly decide the facts? *YES* If so, what facts?
>
> (3) Do you think the District Court applied the wrong law? *YES* If so, what law do you want applied?
>
> (4) Do you feel there are any other reasons why the District Court's judgment was wrong? *YES* If so, what are they?
>
> (5) What action do you want the Court to take in this case?

The only operative questions are numbers (1) and (2). In the brief, the petitioner essentially claimed that as a *pro se* party he should not be held to the strict requirements of pleading conspiracy with specificity, and that the District Court wrongly determined which statute of limitations applied in this cause and at what point

the statute of limitations began to run.

In his petition for a writ of certiorari recently filed with this Court, the petitioner presents two entirely new questions:

> 1. Can the United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit make the acts of a State of Tennessee chancellor judicial acts after the Court of Appeals of Tennessee, Western Section at Jackson ruled that the chancellor lost jurisdiction in the matter?
>
> 2. Does the United States Constitution and 28 U.S.C. § 1654 permit a *pro se* citizen to enter the federal courts if he has presented allegations in his petition that are factual and true?

This Court has long held that it will not consider claims or issues not presented to an intermediate appellate court. *Hudson v. McMillian*, __ *U.S.*__, 112 S. Ct. 995, 1001-1002, 117 L. Ed. 2d 155 (1992); *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S. Ct. 998, 1003, __ L. Ed. 2d __ (1989); *Equal Employment Opportunity Commission v. Federal Labor Relations Authority*, 476 U.S. 19, 106 S. Ct. 1678, 1681, 90 L. Ed. 2d 19 (1986); *Delta Airlines, Inc. v. August*, 450 U.S. 346, 101 S. Ct. 1146, 1155, 67 L. Ed. 2d 287 (1981).

Although the respondent is well aware that the rules of procedure, both on the trial and appellate level, are often not applied as strictly to *pro se* parties, this is not a case in which the petitioner has re-written or edited the questions which were presented before the Court of Appeals. This is an instance in which

wholly new questions are presented for appeal, questions which the Sixth Circuit has not had an opportunity to review or to rule upon.

Furthermore, the questions presented by the petitioner in his petition for a writ of certiorari do not bear upon the grounds on which the dismissal was granted by the District Court, or affirmed by the Court of Appeals. Specifically, the District Court stated in its order, (20a), that the petitioner's complaint failed to state a claim, that the private citizens, including respondent Black, were not state actors within the meaning of 42 U.S.C. § 1983, that the state actors were entitled to immunity, and that the petitioner's 42 U.S.C. §§ 1983 and 1988 claims were barred by the applicable State of Tennessee statute of limitations. The Court of Appeals then affirmed this decision.

Therefore, the petitioner is asking this Court to review questions of law which have never been reviewed by any other court which has considered this case. Furthermore, the petitioner has failed to show any grounds to support his request that these questions should be presented for the first time before this Court.

The respondent would also refer the Court to the appendix contained in the petitioner's petition for a writ of certiorari. It should be noted that neither Appendix H, a personal note to the sheriff from Charles G. Black, nor Appendix I, excerpts from a transcript of a hearing before the Chancery Court of Shelby County, Tennessee, were part of the record presented to the Sixth Circuit. *See* Appellant's Brief, Appellant's Designation of Appendix Contents, 36a-37a.

II.

THE COURT BELOW DID NOT ERR IN DISMISSING PETITIONER ODOM'S *PRO SE* COMPLAINT FOR HIS FAILURE TO STATE A CLAIM, BECAUSE THE PETITIONER FAILED TO PLEAD SPECIFIC FACTUAL ALLEGATIONS TENDING TO SHOW THAT RESPONDENT BLACK CONSPIRED WITH OTHERS ALLEGED TO HAVE BEEN ACTING UNDER COLOR OF STATE LAW FOR THE PURPOSE OF DENYING PETITIONER ODOM'S CIVIL RIGHTS.

In his complaint the petitioner makes numerous conclusory statements regarding respondent Black's participation in the alleged conspiracy:

> A. Defendant Black conspired with defendants Lewis and Robertson for the matter to be assigned to defendant Lewis' Part II of Chancery Court. [9a, ¶ 17]
>
> B. Defendants Black, Walls and Miller wanted this temporary restraining order violated. [9a, ¶ 18]
>
> C. Defendants Black, Walls and Miller wanted plaintiff to be imprisoned to increase the amount of damages they could recover. [9a, ¶ 20]
>
> D. Defendants Black, Walls and Miller wanted plaintiff to be imprisoned. [13a, ¶ 30]

The generally accepted standard for evaluating the sufficiency of a *pro se* litigant's allegations of conspiracy is set out

in *Haines v. Kerner,* 404 U.S. 519, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972). In *Haines, supra,* at 520, the court held that a *pro se* complaint, "However inartfully pleaded, 'must be held to' less stringent standards than formal pleadings drafted by lawyers . . . ." *A pro* se complaint will, however, be dismissed when it fails to comply with Rule 8 *(A)* (2) of the Federal Rules of Civil Procedure which requires ". . . a short and plain statement of the claim."

Although this Court has not issued a ruling directly on point, all Circuits which have addressed the minimum requirements for pleading a conspiracy in a complaint are in accord. The generally accepted rule is that allegations of conspiracy must be supported by material facts, not merely conclusory statements. *Kunik v. Racine County, Wisconsin,* 946 F.2d 1574, 1580 (7th Cir. 1991); *Young v. Biggers,* 938 F.2d 565, 569 (5th Cir. 1991); *Sanchez v. City of Santa Ana,* 936 F.2d 1027, 1039 (9th Cir. 1990), *cert. denied,* 112 S. Ct. 417; *Polur v. Raffe,* 912 F.2d 52, 56 (2nd Cir. 1990), *cert. denied,* 111 S. Ct. 1389; *Gometz v. Culwell,* 850 F.2d 461, 464 (8th Cir. 1988); *Slotnick v. Garfinkle,* 632 F.2d 163, 165 (lst Cir. 1980); *see Arnold v. Board of Education of Escambia County, Alabama,* 880 F.2d 305, 317 (11th Cir. 1989); *Gutierrez v. Lynch,* 826 F.2d 1534, 1539 (6th Cir. 1987); *Shaare Tefila Congregation v. Cobb,* 785 F.2d 523, 527 (4th Cir. 1986), *rev'd on other grounds,* 481 U.S. 615, 107 S. Ct. 2019, 95 L. Ed. 2d 594; *Benavidez v. Gunnell,* 722 F.2d 615, 618 (10th Cir. 1983).

All of these cases were brought under 42 U.S.C. §§ 1983 and/ or 1985. Only the Third Circuit has failed to rule on this issue in any manner.

Several of the above cases deal with factual situations similar to the facts in the case at hand. In *Young, supra,* the plaintiff had appealed from the District Court's grant of a summary judgment in favor of the defendants on the plaintiff's 42 U.S.C. § 1983 claim. The plaintiff alleged that a judge, prosecutor, witness, police

officers, defense attorneys and others had conspired to convict him unjustly of armed robbery in the State of Mississippi. In reviewing the District Court's finding, the Fifth Circuit dismissed the claims against the judge and the prosecuting attorney because of their judicial immunity, and dismissed the claim against the defense attorneys, because the plaintiff made only conclusory allegations against these defendants regarding the conspiracy. *Young, supra,* at 569.

In *Slotnick, supra,* the plaintiff alleged that six attorneys, two state court judges, a state court clerk, a justice of the peace, the superintendent of the state hospital, and a county sheriff, acting in a conspiracy, intentionally deprived him of rights established under 42 U.S.C. §§ 1983 and 1985. On a motion to dismiss, the judge and the prosecutors were dismissed under the doctrine of judicial immunity, and all other attorneys were dismissed from the action because the complaint failed to present material facts, not merely conclusionary statements, to support the conspiracy claim. The dismissal was granted even though the First Circuit noted that *pro se* complaints are to be read generously. *Slotnick, supra,* at 165.

The facts in the cause at hand are closely analogous to those in *Young, supra,* and *Slotnick, supra.* In his complaint (1a), the petitioner sets forth numerous conclusions from which he draws the inference that respondent Black participated in a conspiracy, along with the other defendants, to deprive him of his civil rights. However, the petitioner states no facts to support his claim that respondent Black had entered into a conspiracy, and that any of respondent Black's actions were intended to deprive the petitioner of his civil rights. This is precisely the reasoning of the District Court, which liberally construed the petitioner's *pro se* pleading, yet found that the petitioner's allegations lacked the requisite factual foundation to support the alleged cause of action (22a).

III.

THE COURT BELOW DID NOT ERR IN DETERMINING THAT THE PETITIONER ODOM'S CLAIMS WERE BARRED BY THE APPLICABLE STATE OF TENNESSEE STATUTE OF LIMITATIONS.

The federal statutes at issue, 42 U.S.C. §§ 1983 and 1985(3) do not contain their own periods of limitation. It is well established that the courts must look to the analogous state statute of limitations to apply to such claims. *Wilson v. Garcia,* 471 U.S. 261, 105 S. Ct. 1938, 1942, 84 L. Ed. 2d 254 (1985); *see Owens v. Okure,* 489 U.S. 189, 109 S. Ct. 573, 577, __ L. Ed. 2d __ (1989). Tenn. Code Ann. § 28-3-104(a), *Personal Tort Actions,* provides that actions brought in tort or under federal civil rights statutes shall be commenced within one year after the cause of action accrues.

The pivotal issue to be determined, therefore, is precisely when the cause of action accrues, thereby triggering the commencement of the statute of limitations. Generally, federal courts have not only adopted the analogous state statute of limitations, *Wilson, supra,* at 1942, but have also adopted the ancillary rules of the states regarding the application of the analogous statute of limitations. *See Board of Regents of the University of the State of New York v. Tomanio,* 446 U.S. 478, 100 S. Ct. 1790, 1795, 64 L. Ed. 2d 440 (1980); *Johnson v. Railway Express Agency, Inc.,* 421 U.S. 454, 95 S. Ct. 1716, 1723, 44 L. Ed. 2d 295 (1975). We must therefore look at the appropriate law of the state in which the cause of action allegedly arose to determine when the statute of limitations begins to run.

In Tennessee, it has long been established that the statute of limitations for a cause of action under a conspiracy claim begins to run from the last overt act of the conspirators, and not when the

injury is first discovered. *Emerson v. Machamer,* 221 Tenn. 739, 431 S.W. 2d 283, 286 (1968); *see Budget Rent-A-Car of Knoxville v. Car Services, Inc.,* 225 Tenn. 342, 469 S.W. 2d 360, 362 (1971).

In his complaint the petitioner states that on November 2, 1987 he was required to pledge additional collateral to secure his appeal to the Tennessee Court of Appeals (13a, ¶ 31). This is clearly the last overt act of the alleged conspiracy, as the acts which occurred after this date dealt with the beginning of the petitioner's incarceration for the contempt charge (13a, ¶ 29), petitioner's filing of a notice of appeal with the Tennessee Court of Appeals (13a, ¶ 31), the ruling of the Tennessee Court of Appeals (14a, ¶ 32) and the filing of a subsequent suit on January 4, 1989 (14a, ¶ 34). The complaint was not filed until February 23, 1989 (1a), well over a year after the last overt act of the alleged conspirators, *i. e.,* November 2, 1987.

Although this Court has always chosen an analogous state statute of limitations, this Court has not always followed that state's ancillary laws on the applications of its statute of limitations. In *Chardon v. Fernandez,* 454 U.S. 6, 102 S. Ct. 28, 29, 70 L. Ed. 2d 6 (1981) the Court held that although the Puerto Rican statute of limitations was to be used as the analogous state statute, the state statute began to run at the time of the discriminating act, not at the point of which the consequences of the act became painful. However, should this Court find that the ruling in *Chardon, ibid.,* applies in this case, the appropriate Tennessee statute of limitations would still bar the petitioner's claim. The last act of the conspiracy still occurred November 2, 1987, more than a year preceding the filing of the complaint.

In fact, the United States District Court, Middle District of Tennessee has previously applied *Chardon, ibid.,* to a 42 U.S.C. § 1983 case in this state. In *Windsor v. A Federal Executive Agency,* 614 F. Supp. 1255, 1263 (M. D. Tenn. 1983), *aff'd,* 767

F.2d 923, the District Court had before it a claim for defamation. The plaintiff in that case argued that the statute of limitations should not begin running until the effect of the conduct ceased to have an effect upon him. The court ruled, however, that both under the laws of Tennessee and under *Chardon, supra,* the statute must begin to run at the time of the alleged wrongful conduct, not at the point when the consequences of such conduct become painful and/or cease. Respondent Black would submit that under Tennessee law, the last "wrongful act" took place on November 2, 1987 when the petitioner was required to pledge additional collateral to secure his right of appeal to the Tennessee Court of Appeals.

CONCLUSION

For all of the foregoing reasons, the judgment of the United States District Court for the Western District of Tennessee, as well as the judgment of the United States Court of Appeals Sixth Circuit, dismissing petitioner Odom's complaint should be affirmed and this appeal dismissed. The petition for a writ of certiorari fails to state a special, important reason for review, pursuant to Rule 10 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

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APPENDIX A — COMPLAINT IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED FEBRUARY 23, 1989

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NO. 89-2183 TUA

WILLIAM N. ODOM, JR.,

Plaintiff,

VS.

GEORGE T. LEWIS, Shelby County Chancellor; CHARLES G. BLACK, Practicing Attorney; J.J. HENRY, Deputy Sheriff; JOHN C. ROBERTSON, Chancery Court Clerk and Master and Special Chancellor; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; and STATE OF TENNESSEE GOVERNMENT.

Defendants.

[stamped]
JEROME TURNER
JAMES H. ALLEN

JURY TRIAL DEMANDED

Appendix A

COMPLAINT

Comes now the Plaintiff, William N. Odom, Jr., Pro Se, and in support of his cause of action would state as follows:

1. The Plaintiff is an adult resident citizen of Shelby County, Tennessee and a United States Citizen.

2. The Defendant, George Lewis, is an adult resident of Shelby County, Tennessee, and is a duly elected Chancellor of Chancery Court, Shelby County acting under color of laws of the State of Tennessee, and is charged and vested with the authority for and responsibility of adjudicating matters filed in Chancery Court, Shelby County, Tennessee. He is sued in his official and individual capacities.

3. The Defendant, Charles G. Black, is an adult resident of Shelby County, Tennessee, and is a practicing attorney in the State of Tennessee acting under color of the laws of the State of Tennessee, and is charged as an officer of the Court to represent individuals in matters at law submitting good faith pleading and upholding the laws of the State of Tennessee. He is sued in his official capacity as an officer of the court and in his individual capacity as a practicing attorney.

4. The Defendant, J.J. Henry, is an adult resident citizen of Shelby County, Tennessee and was regularly employed as an officer of the Shelby County Sheriff's Department and at all material times herein was acting under color of law. He is sued individually and in his official capacity.

5. The Defendant, John C. Robertson, is an adult resident citizen of Shelby County, Tennessee and is the duly elected or

appointed Clerk and Master of Chancery Court, Shelby County and an appointed Special Chancellor of Chancery Court, Shelby County, acting under color of the laws of the State of Tennessee, and is charged and vested with the authority of supervising and directing the employees of the Chancery Court Clerk Office. And as a Special Chancellor is charged and vested with the authority for and responsibility of adjudication matters filed in Chancery Court, Shelby County, Tennessee. He is sued in his official and individual capacities.

6. The Defendant, Michael B. Vaughn, is an adult citizen of Orange Park, Clay County, Florida. He is sued generally and in his individual capacity.

7. The Defendant, Ruby I. Miller, is an adult resident citizen of Shelby County, Tennessee. She is sued generally, individually, and in her self-appointed financial trustee of Michael B. Vaughn capacity.

8. The Defendant, Lillian V. Walls, is an adult resident citizen of Shelby County, Tennessee. She is sued generally, individually, and in her self-appointed financial trustee of Michael B. Vaughn capacity.

9. The Defendant, Shelby County Government, is and all times relevant hereto, was a duly organized governmental body existing by virtue of and pursuant to the laws and Constitution of the State of Tennessee. At all relevant times herein, the County oversaw the management and funding of the Shelby County Sheriff's Department and Election Commission, and paid its employees, including J.J. Henry, and is ultimately responsible for the policies and practices, whether written or defacto, of the Sheriff's Department and Election Commission.

Appendix A

10. The Defendant, State of Tennessee Government, is and all times relevant hereto, was a duly organized governmental body existing by virtue of and pursuant to the laws and Constitution of the United States of America. At all relevant times herein, the State oversaw the election of Chancery Court Judges and the election or appointment of Chancery Court Clerks and Masters and the granting of license to attorneys to practice law in the State of Tennessee. That the State paid its Chancellors and Clerks and Masters and is ultimately responsible for its practices and rulings, written or defacto, of the Chancellors and Clerks and Masters. That the State grants license to attorneys and are ultimately responsible for practicing attorneys to uphold the laws of the State of Tennessee.

11. This cause of action is brought pursuant to 42 USC Sections 1983, 1985 and 1988, and the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

12. This Court has jurisdiction over this action based upon 28 USC Sections 1331, 1332 and 1343, as well as the abovesaid statutory and constitutional provisions. The Plaintiff further invokes the pendant jurisdiction of this Court to hear and decide claims arising under state law.

13. The cause of action arose in Shelby County, Tennessee, in the Western District, Western Division of the State of Tennessee, thereby making venue proper pursuant to 28 USC Section 1391(b).

14. As background for his cause of action the Plaintiff would state that prior to August, 1984, Defendants Walls and Miller became the self-appointed financial trustees of Defendant Vaughn. Defendant Walls is Defendant Vaughn's sister and Defendant Miller is Defendant Vaughn's aunt. That on or about August 1, 1984, Defendant Vaughn was 41 years old. He was divorced and the father of four children. Defendant Vaughn was an eleven (11) year veteran

of the U.S. Navy and also had been a patrolman with the Memphis City Police Department for eight (8) years. He resided at Coldwater, Mississippi with three of his four children. That on or about August 1, 1984, Defendant Vaughn was employed by ATS Telephone Systems in Memphis, Tennessee. Prior to August, 1984, Defendant Vaughn had been in both Wage Earner and Bankruptcy.

That on or about August 15, 1984, Defendant Miller purchased a house at 829 Freeman Street, Memphis, Tennessee. Defendant Miller moved Defendant Vaughn and his children into this house. Prior to August 15, 1984, Defendants Vaughn and Walls opened a joint checking account from which to conduct Defendant Vaughn's financial affairs. Defendant Vaughn was to deposit his pay checks into this account with Defendant Walls making disbursements for Defendant Vaughn's debts. From this same checking account Defendant Walls was to pay Defendant Miller the amount of the house note of 829 Freeman Street.

That prior to August, 1984, Defendant Vaughn had borrowed more than Fifteen Thousand Dollars ($15,000.00) from Defendant Miller. Also prior to August, 1984, Defendant Walls had made a loan from her Credit Union for Defendant Vaughn. The amount of the monthly Credit Union note was being paid from the joint checking account of Defendants Walls and Vaughn.

Defendant Vaughn and his children moved into 829 Freeman Street on or about August 20, 1984. This house was located next door to Plaintiff. Shortly after Defendant Vaughn moved next door to Plaintiff he and Plaintiff entered into a homosexual relationship. At about the same time Plaintiff began to pay extra expenses of Defendant Vaughn. Defendant Vaughn's service revolver was in the Pawn Shop and he was about to lose it for non-payment. Defendant Walls was not aware of this obligation. Plaintiff paid the gun out for Defendant Vaughn. From that time until February, 1986, Plaintiff

paid over Ten Thousand Dollars ($10,000.00) on debts and luxuries for Defendant Vaughn and his family. Plaintiff paid for Defendant Vaughn's children's Christmas gifts in 1984. The amount of this Christmas exceeded Five Hundred Dollars ($500.00).

That on or about August 1,1984, Plaintiff had lived at 837 Freeman Street for twenty five (25) years. Plaintiff moved into this house when he was first married. Plaintiff lived with wife and two sons. Shortly after Plaintiff and Defendant Vaughn entered into the homosexual relationship Plaintiff grew to love Defendant Vaughn. Defendant Vaughn told Plaintiff he loved him also. On or about November 14, 1984, Plaintiff told his wife of the relationship. Plaintiff's wife moved out of 837 Freeman Street on or about November 14, 1984.

Defendant Vaughn helped Plaintiff destroy the home of Plaintiff. Plaintiff and Defendant Vaughn moved a piano, a full six-piece bedroom suite, a sofa, a television, a freezer full of food and many smaller items to Defendant Vaughn's house, 829 Freeman Street. Plaintiff gave Defendant Vaughn a notarized bill of sale for these items. Also, Plaintiff gave Defendant Vaughn the signed title to his 1976 Chevrolet.

On or about November 14, 1984, Plaintiff's wife sued for divorce asking for relief in being able to return to her home. Plaintiff moved around the corner to 857 Bowen Circle, another house he owned with his brother and sister. Plaintiff still resides at this address. Plaintiff and Defendant Vaughn continued their homosexual relationship. Plaintiff's wife called Defendant Miller on or about January 1, 1985, asking her to make Defendant Vaughn leave her husband alone.

Defendant Vaughn was a member of the Church of Christ. Plaintiff and his wife were members of the Church of Christ.

Appendix A

Defendant Vaughn placed his membership at the Macon Road Church of Christ, the same church which Plaintiff and his wife had attended for over twenty five (25) years. The Plaintiff's wife and children, the Freeman Street and Bowen Circle neighbors, many members of the Macon Road Church of Christ, and several members of Defendant Vaughn's family knew of the homosexual affair between Plaintiff and Defendant Vaughn. On or about September 30, 1985, Defendant Vaughn's mother, Alice Maxine Dorris, called Plaintiff's wife asking her to quit spreading rumors about her son being gay. Plaintiff's wife told Defendant Vaughn's mother that her son and Plaintiff were, in fact, involved in a homosexual affair.

Defendant Vaughn denied to his family that he and Plaintiff were in such a relationship. The affair continued between Defendant Vaughn and Plaintiff until on or about September 1, 1985, with no problems. On or about that date Defendant Vaughn learned Plaintiff's wife was going to subpoena him as a witness in her divorce proceeding. Defendant Vaughn asked Plaintiff to settle out of court with his wife where he would not be forced to testify about the homosexual relationship. At about the same time Plaintiff and Defendant Vaughn were arguing over Defendant Vaughn volunteering for a Job related school in Kansas. On or about September 1, 1985, as Plaintiff and Defendant Vaughn argued about the divorce matter and Defendant going to school Plaintiff told Defendant Vaughn that if he was asked about the homosexual relationship during the divorce trial that Plaintiff would admit to it. Defendant Vaughn told Plaintiff that he would deny it and it would be Defendant's word against Plaintiff's. On or about September 15, 1985, Defendant Vaughn left for Kansas to attend school. During this three week period Plaintiff and Defendant talked daily. On or about September 20, 1985, Plaintiff taped a conversation between himself and Defendant Vaughn where sexual matters were discussed. Plaintiff told Defendant shortly thereafter that Plaintiff

had made a tape of Plaintiff and Defendant discussing sexual matters.

On or about October 5, 1985, Defendant returned from his schooling. Plaintiff and Defendant continued in their homosexual relationship as it was prior to September 1, 1986. On or about November 9, 1985, Defendant Vaughn asked Plaintiff to buy a computer from a former Navy friend, Bob Gregor, who was then selling computers out of his home. On or about November 9, 1985, Defendant Vaughn and Plaintiff went to Gregor's home where Plaintiff bought a computer to please Defendant Vaughn.

The homosexual relationship between Defendant Vaughn and Plaintiff continued to be peaceful until on or about February 1, 1986. Plaintiff's divorce trial had been scheduled on or about March 1, 1986. Plaintiff and Defendant Vaughn were again arguing about Plaintiff settling out of court with his wife. Defendant Vaughn was served with a subpoena on or about February 10, 1986, to appear as a witness in the divorce trial between Defendant and his wife.

15. That on or about February 1, 1986 Plaintiff had been employed with the United States Postal Service for approximately twenty five (25) years. Plaintiff had considerable amount of funds vested toward the Civil Service Retirement Program. Plaintiff along with his wife owned two houses and Plaintiff had a third interest in another house with his brother and sister. Plaintiff stood to inherit from his 100 year old aunt's estate.

16. On or about February 1, 1986, Defendants Walls and Miller hired Defendant Black to obtain some of Plaintiff's assets in the name of Defendant Vaughn. Defendant Vaughn agreed to let Defendants Walls and Miller sue Plaintiff in his name and also gave them information about his relationship with Plaintiff.

Appendix A

17. On or about February 6, 1986, Defendant Black filed a Complaint For Injunction and requested a Temporary Restraining Order. On or about February 6, 1986, Defendant Black conspired with Defendants Lewis and Robertson for the matter to be assigned to Defendant Lewis' Part 2 of Chancery Court. Defendant Robertson did not act on the Temporary Restraining Order until February 7, 1986.

18. Defendant Lewis approved Defendant Black's request for a Temporary Retraining Order and a fiat was ordered on February 7, 1986. Defendant Black had requested and Defendant Lewis had approved a Temporary Restraining Order which did not conform to the statutes of the State of Tennessee. On or about February 6, 1986, Defendant Black gave written orders for the Sheriff's Department to serve this Temporary Restraining Order upon Plaintiff at his place of employment between the hours of 7:30 a.m and 4 p.m. Defendants Black, Walls and Miller wanted this Temporary Restraining Order violated; they want it served during the business hours of Defendant Vaughn's employer.

19. On February 6, 1986, at or about 2:15 p.m. Plaintiff was called to an office on the main floor of the U.S. Post Office, 555 South Third Street, Memphis, Tennessee. Defendant J.J. Henry served Plaintiff with a Complaint For Injunction. Plaintiff asked Defendant Henry where he signed. Defendant Henry stated that Plaintiff did not sign therefore Plaintiff turned and walked out of office as Defendant Henry started to write on a paper. Defendant Henry never read to Plaintiff or served Plaintiff with a copy of the Temporary Restraining Order. The Temporary Restraining Order was brought to the Plaintiff some fifteen (15) minutes later in a sealed Post Office envelope by Post Office Clerk Carol Diffee.

20. On February 7, 1986, at approximately 2:20 p.m. Plaintiff violated the Temporary Restraining Order. On or about February

19, 1986, Defendant Black submitted an Amended Complaint asking for Plaintiff to be found in Contempt of Court and also asked for two hundred and fifty thousand dollars damages in the name of Defendant Vaughn. Defendants Black, Walls and Miller wanted Plaintiff to be imprisoned to increase the amount of damages they could recover. Defendants Black, Walls and Miller requested unliquidated damages for injury to Defendant Vaughn in the original Complaint For Injunction and set a high dollar amount in the Amended Complaint. Requesting unliquidated damages for injuries to person, property or character, involving unliquidated damages in chancery court violates the statutes of the State of Tennessee.

21. On or about February 20, 1986, Plaintiff through his attorney of record challenged chancery court and Defendant Lewis' jurisdication in the matter. On or about March 27, 1986, Defendant Lewis denied Plaintiff's Motion to Dismiss taking jurisdiction over the matter. On or about April 29, 1986, Plaintiff requested of Defendant Lewis the right to make an interlocutory appeal to the Tennessee Appellate Court in the matter of jurisdiction. Defendant Black in his answer on or about May 15, 1986, requested Defendant Lewis not honor this request based upon theory that "No irreparable injury will result from the denial of the interlocutory Appeal;". On or about May 21, 1986, Defendant Lewis agreed with Defendant Black and the request for an interlocutory appeal was denied.

22. On or about August 1, 1986, Defendant Vaughn had his minister, Paul Eubanks, of the Orange Park Florida Church of Christ write Robert Brown, minister of the Macon Road Church of Christ, Memphis, Tennessee, telling him that Defendant Vaughn thought the suit was wrong and to ask Plaintiff if he would drop his cross complaint against Defendant Vaughn. Defendant Vaughn could not ask Defendant Black to approach attorney for Plaintiff about dropping suit because Defendant Walls and Defendant Miller

had hired Defendant Black and the suit against Plaintiff was theirs. Defendants Walls and Miller did not want the suit dropped.

23. Defendant Vaughn and Plaintiff talked telephonically for approximately two months, August and September, 1986, discussing dropping the lawsuit. Defendant Vaughn told Plaintiff that Defendant Black was to get a third of any damages received from Plaintiff and a half of any damages received if the matter was appealed to a higher court. Defendant Vaughn and Plaintiff agreed to drop lawsuit on or about October 1, 1986. Defendant Vaughn and Plaintiff were to remain friends with Defendant Vaughn living in Florida and Plaintiff remaining in Memphis, Tennessee.

24. On or about October 1, 1986, Defendant Vaughn wrote Defendant Black and Plaintiff wrote his attorney instructing them to drop the lawsuits. On or about October 1, 1986, Defendant Black involved a Tennessee Civil Court Rule requesting a trial date be assigned within ten (10) days. On or about October 1, 1986, Plaintiff's attorney asked defendant Black about letter from Defendant Vaughn requesting Defendant Black drop the lawsuit. Plaintiff's attorney was told by Defendant Black that he had received the letter from Defendant Vaughn but that he and Defendants Walls and Miller did not want to drop the lawsuit.

25. On or about October 1, 1986, Defendant Vaughn quit calling Plaintiff. Plaintiff could not find out from Defendant Vaughn why Defendants Black and Walls would not drop the lawsuit. Plaintiff became aware on or about October 1, 1986 that the lawsuit filed against him was controlled by Defendants Walls, Miller and Black and not by Defendant Vaughn. Defendant Black made in one of his pleadings the statement that Plaintiff attempted to bribe Defendant Vaughn to drop lawsuit. Plaintiff had on or about February 15, 1986, left money on Defendant Vaughn's door at 829 Freeman Street in order that he could pay utility bill therefore not

requiring Defendant Vaughn to move. Defendant Vaughn has testified in a deposition and also in the trial that he did not tell Defendant Black that Plaintiff attempted to bribe him. Defendant Black made statements in his pleading which were not made in good faith. Defendant Black used the courts for himself and Defendants Walls and Miller. Defendant Black did not represent Defendant Vaughn.

26. That on or about October 7, 1986, Plaintiff withdrew his offer to drop his cross complaint and Plaintiff's attorney filed a Notice To Take Deposition of Defendant Vaughn. Shortly thereafter Defendant Vaughn took control of the matter when he learned he must come to Memphis to give a deposition. On or about October 20, 1986, Defendant Vaughn insisted that Defendant Black make the offer to drop the lawsuit if Plaintiff would drop his cross complaint.

27. That on or about October 27, 1986, Plaintiff's attorneys of record, Richard J. Ryan and Richard J. Ryan, Jr., withdrew as Plaintiff's counsel because Plaintiff would not drop his cross complaint. On or about October 30, 1986, Plaintiff notified Defendant Lewis that he would represent himself, Pro Se, in the matter.

28. Trial date for the matter was set for December 8, 1986. Defendant Lewis did not grant Plaintiff a fair trial on that date. Defendant Lewis denied Plaintiff the right to question Defendant Henry concerning service of the Temporary Restraining Order served on February 7, 1986. Defendant Lewis found Plaintiff guilty of outrageous conduct for violating the Temporary Restraining Order and ordered a judgment of Thirty Thousand Dollars ($30,000.00) for Defendants Walls and Miller in the name of Defendant Vaughn. Defendant found Plaintiff guilty of Contempt of Court and sentenced Plaintiff to ten (10) days in the Shelby

County Correctional Center. Defendant Lewis did not address Plaintiffs cross complaint on the day of the trial, December 8, 1986. Defendant Black requested at the trial that Plaintiff be found in Contempt of Court.

29. On January 5, 1987, Plaintiff entered Shelby County Correctional Center and served ten (10) days. The Defendants, and each of them, knew that finding the Plaintiff in Contempt of Court would result in the Plaintiff being incarcerated for an unduly long period of time. As the results of this incarceration Plaintiff was fingerprinted, a "mug shot" taken and he was incarcerated for ten (10) days during which time the Plaintiff suffered embarrassment, humiliation and great mental stress not only because of the incarceration, but because his co-workers, peers and family were aware of his incarceration, and further, that he was in physical danger from other inmates due to the homosexual nature of the matter.

30. That on or about December 8, 1986 Richard J. Ryan, Jr. again became Plaintiff's Attorney of Record. That on or about December 31, 1986, Plaintiff made a motion to Amend Judgment And For Stay Of Jail Time. Defendant Black in his Answer to Defendant's Motion For Amendment Of Judgment asked Defendant Lewis not to stay Plaintiff's jail time. Defendants Black, Walls, and Miller wanted Plaintiff to be imprisoned.

31. That on or about March 16, 1987, Plaintiff filed a Notice of Appeal in the matter. That on or about April 14, 1987, Plaintiff was required by Defendant Robertson, as a Special Chancellor, to give a Deed of Trust to Chancery Court for his property at 857 Bowen Circle in order to have the right to appeal the jurisdiction and judgment of the matter to the Court Of Appeals of Tennessee, Western Section At Jackson. On or about November 2, 1987 Plaintiff was required to pledge additional collateral of Twenty-

Five Thousand dollars ($25,000.00) which represented a partial distribution of his Aunt's estate.

32. On or about February 26, 1988, The Court of Appeals of Tennessee, Western Section At Jackson issued an opinion in the matter. This court reversed the judgment. The court stated:

> "Once an objection has been made, the subject matter jurisdiction is taken away, and the Chancellor *must dismiss* the action."

33. The Court of Appeals of Tennessee, Western Section At Jackson also stated in its opinion that:

> "The Costs of this appeal and in the trial court are taxed to the appellee, for which execution mar issue if necessary.

Defendant Miller paid Plaintiff's attorney for the cost that Plaintiff incurred in making the appeal in this matter.

34. On or about January 4, 1989, Defendants Black, Walls and Miller filed suit in Circuit Court, Shelby County, Tennessee stating the cause of action as the violation of the Temporary Restraining Order. Plaintiff can find an attorney to represent him in the matter in Circuit Court but cannot find an attorney to represent him in the matter before this Court therefore the reason for Plaintiff acting Pro Se in the matter.

35. That the actions of Defendant Henry were taken pursuant to a defacto policy of the Shelby County Sheriff's Department and the Shelby County Government which permitted illegal service of process.

36. That the actions of the Shelby County Election Commission and the Shelby County Government were taken pursuant to a defacto policy of certifying any practicing attorney, not learned in the laws of the State of Tennessee, to run for the position of Chancellor.

37. That the Shelby County Government for a substantial period of time prior to February 7, 1986, knew and approved of the defacto policies which resulted in malicious prosecution, false imprisonment, unfair trial and illegal seizure of property

38. That the actions of the State of Tennessee were taken pursuant to a defacto policy of granting a license to any attorney to practice law in the State of Tennessee. This defacto policy allows the granting of license to attorneys to practice law who do not uphold the laws of the State of Tennessee. That the actions of the State of Tennessee were taken pursuant to a defacto policy of swearing in any attorney duly elected as a Chancellor. This defacto policy allows for attorneys not learned in the laws of the State of Tennessee to serve as Chancellor in the Chancery Court.

39. The actions of the Defendants Lewis, Henry, Black, and Robertson as aforesaid were committed in the course and scope of their employment and under color of law, and directly and proximately caused the above described injuries and losses to the Plaintiff.

40. The actions of the Defendants Black, Vaughn, Miller and Walls as aforesaid were committed as individuals and directly and proximately caused the above described injuries and losses to the Plaintiff. That Defendants Walls and Miller hired Defendant Black who operating under color of laws conspired directly or proximately caused the above described injuries and losses to the

Plaintiff. That Defendant Vaughn allowed his name to be used by Defendants Walls and Miller to hired Defendant Black who operating under color of laws conspired directly or proximately caused the above described injuries and losses to the Plaintiff.

41. Plaintiff reiterates, reaffirms and relies upon each and all the the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Henry and Robertson were acting under color of laws conspired, planned, schemed and acted in concert to deny, violate or otherwise deprive or attempt to deprive the Plaintiff of the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments of the United States Constitution.

42. Plaintiff reiterates, reaffirms and relies upon each and all off the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Robertson, Vaughn, Miller, and Walls imdividually conspired, planned, schemed and acted in concert to deeny, violate or otherwise deprive or attempt to deprive the Plaintiff off the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

43. Plaintiff reiterates, reaffirms and relies upon each and all off the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Henry and Robertson acting under color of laws and Defendants Black, Vaughn, Miller and Walls acting generally and individually did deny, violate or otherwise deprive or attempt to deprive the Plaintiff of the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution, in that they maliciously prosecuted, falsely imprisoned, interfered with his right to a fair trial, illegally seized property and intentionally inflicted emotional distress to the Plaintiff, all of which resulted in losses and damages to the Plaintiff.

Appendix A

WHEREFORE PREMISES CONSIDERED, the Plaintiff respectfully demands the following relief, jointly and severally, against all of the Defendants:

1. That proper process issue upon each of the Defendants requiring them to answer this Complaint.

2. That upon a trial of this cause, Plaintiff be awarded actual and compensatory damages in the amount of Ten Million Dollars ($10,000,000.00).

3. That upon a trial of this cause, Plaintiff be awarded punitive damages in the amount of Fifty Million Dollars ($50,000.000 00)

4. That Plaintiff be awarded costs pursuant to 42 USC 1988.

5. That Plaintiff demands a jury to try the issues herein when joined.

6. For all such other, further and general relief to which the Plaintiff may be entitled in the premises.

Respectfully submitted,

s/ William N. Odom, Jr.
WILLIAM N. ODOM, JR.
857 Bowen Circle
Memphis, TN 38122
(901) 323-2500

APPENDIX B — DEFENDANT CHARLES G. BLACK'S MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NO. 89-2183 TUA

WILLIAM N. ODOM, JR.,

Plaintiff,

VS.

GEORGE T. LEWIS, et al.,

Defendants.

DEFENDANT, CHARLES G. BLACK, MOTION TO DISMISS

Comes now the Defendant, Charles G. Black, by and through counsel of record, pursuant to Federal Rule of Civil Procedure 12, and moves this court to dismiss this action. Defendant, Charles G. Black, submits t hat the Plaintiff's Complaint fails to state a claim for which relief can be granted and further, that the Plaintiff's Complaint is barred by the statute of limitations. In support of this motion, the Defendant, Charles G. Black, relies upon the Memorandum filed herein.

PETKOFF, LANCASTER & WALKER

BY: s/ George S. Petkoff
George S. Petkoff #7643
Attorneys for Defendant,
Charles G. Black
Washington Courtyard
305 Washington Avenue
Memphis, Tennessee 38103
(901) 523-1050

Appendix B

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document was served on all counsel of record by mailing a copy thereof, via U.S. mail, postage prepaid, on this the *19* day of *April*, 1989.

PETKOFF, LANCASTER & WALKER

BY: s/ George S. Petkoff
Attorneys for Defendant,
Charles G. Black

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION ON DEFENDANTS' MOTIONS TO DISMISS

[stamped]
This document entered on docket sheet in compliance with Rule 58 and/or 79 (a) FRCP on 10-4-91.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NO. 89-2183-TUA

WILLIAM N. ODOM, JR.,

Plaintiff,

VS.

GEORGE T. LEWIS, et al.,

Defendants.

ORDER ON DEFENDANTS' MOTIONS TO DISMISS

In this civil rights action against a Shelby County Chancellor, various court personnel, the Shelby County Government, the State of Tennessee, and three private citizens and their attorney, plaintiff William N. Odom, Jr. alleges the defendants conspired to deprive him of his civil rights in violation of 42 U.S.C. §§ 1983, 1985, and 1988, as well as the First, Fourth, Sixth and Fourteenth Amendments. Plaintiff also alleges he has certain pendent state claims against the parties although he does not specify what such claims might be.

Appendix C

Plaintiff's allegations stem from a state court action initiated by the three individual defendants wherein they sued Odom (the plaintiff in this action) for the tort of outrageous conduct. That action was eventually dismissed on appeal when the Tennessee Court of Appeals ruled that plaintiff's objection to the unliquidated damages claim deprived Chancery Court of jurisdiction.

Presently before the court are four motions to dismiss on various grounds encompassing all the defendants. Among the grounds presented are: insufficiency of process under *Fed. R. Civ. P.* 12(b)(4); failure to state a claim upon which relief can be granted under Rule 12(b)(6); expiration of the applicable statute of limitations; sovereign immunity; judicial immunity; and qualified immunity.

After due consideration of the pleadings and supporting memoranda of law submitted by the parties, the court finds dismissal to be proper for the following reasons. With regard to Chancellor Lewis, the court finds he is entitled to judicial immunity inasmuch as he was acting under state statute within his judicial capacity. All of the acts alleged to have been committed by the Chancellor were judicial acts and were not taken in the clear absence of all jurisdiction. The fact that the Tennessee Court of Appeals eventually agreed with the plaintiff that the lawsuit filed in Chancery Court must be dismissed once a party objects to the trial of such an unliquidated claim in Chancery Court does not require a holding that the Chancellor acted in the clear absence of all jurisdiction. An injunction was sought and the jurisdictional statute, like most statutes, lent room for argument concerning the extent to which it limited jurisdiction.

The State of Tennessee is entitled to sovereign immunity.

Deputy Sheriff J. J. Henry was acting within the scope of his

duties as a court employee and the writ is not alleged to have been invalid on its face; he is entitled to quasi-judicial immunity.

Chancery Court Clerk John C. Robertson is said to have required plaintiff to post a deed of trust to secure his right to appeal. Such conduct does not violate any clearly established constitutional right of the plaintiff and defendant Robertson is entitled to qualified immunity from suit for damages.[1] The complaint that Robertson conspired with the other defendants is totally devoid of any factual statements; it is a wholly conclusory allegation that, by itself, is insufficient to withstand a motion to dismiss. Moreover, as is true with respect to the conclusory allegation of conspiracy against the other defendants, there is no allegation that such conspiracy was formed for the purpose of class-based invidious discrimination. Without such an allegation, the conspiracy claims under 42 U.S.C. § 1985(2) fail. *See Allen v. Allied Plant Maint. Co.*, 636 F. Supp. 1090, 1093 (M.D. Tenn. 1986).

A liberal construction of plaintiff's pro se pleadings reveals that the Shelby County Government has essentially been sued for its supervision of Deputy Sheriff Henry and the Shelby County Election Commission. While plaintiff claims a de facto policy of certifying unlearned lawyers as judicial candidates and "permitting illegal service of process," he makes no specific allegations as to how this policy was arrived at, implemented, or applied to him. Plaintiff thus fails to state a claim in this regard upon which relief can be granted.

Regarding the individual defendants, Michael B. Vaughn, Ruby I. Miller, and Lillian V. Walls, and their attorney Charles G. Black, plaintiff does not allege any facts to show they acted under

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1. The same may also be said with respect to the allegations against Deputy Henry.

color of state law, as is required for a section 1983 action, except insofar as he alleges that they conspired with state actors. However, plaintiff has failed to allege with any specificity how their actions in pursuing a civil state court action constituted a conspiracy. A bare statement that the defendants conspired to infringe the plaintiff's civil rights with no fleshing out of the particulars cannot withstand a motion to dismiss. *See Gutierrez v. Lynch*, 826 F.2d 1534, 1538-39 (6th Cir. 1987); *Barkley v. City of Jackson*, 705 F. Supp. 390, 392 (W.D. Tenn. 1988).

Finally, the court addresses the question of the statute of limitations raised by a number of the defendants. The final act alleged by plaintiff occurred on November 2, 1987 when he posted collateral to secure his right to appeal. This suit was filed on February 23, 1989, and is governed by *Tenn. Code Ann.* § 28-3-104, a one year statute of limitations. Plaintiff argues that his rights were not violated until Chancery Court lost control of the suit when the Tennessee Court of Appeals dismissed the Chancery Court suit in February of 1988. The acts complained of, however, occurred more than one year prior to the filing of this suit and claims that such acts violated plaintiff's civil rights are therefore barred by the statute of limitations.

Absent federal claims upon which federal jurisdiction can be sustained, plaintiff's pendent state claims are not justiciable before this court.

The four motions of the defendants to dismiss are granted and this action is dismissed.

IT IS SO ORDERED this 3rd day October, 1991.

Appendix C

s/ Jerome Turner
JEROME TURNER
UNITED STATES DISTRICT JUDGE

APPENDIX D — APPELLANT'S BRIEF BEFORE THE SIXTH CIRCUIT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-6439

WILLIAM N. ODOM, JR.

Plaintiff - Appellant

V.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE

Defendants - Appellees

APPELLANT'S BRIEF

Pro Se

William N. Odom, Jr.
857 Bowen Circle
Memphis, TN 38122
(901) 323-2500

Appendix D

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-6439

WILLIAM N. ODOM, JR.

Plaintiff - Appellant

V.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE

Defendants - Appellees

APPELLANT'S BRIEF

(1) Did the District Court fail to consider important grounds for relief? *YES* if so, what grounds?

The first ground that I feel that the District Court failed to consider in this matter is that Plaintiff is not required to prove his case in his Complaint. I feel that the District Court failed to take into consideration that this matter was filed Pro Se and that the requirements to present a Complaint to the Court are not the same as a Complaint filed by an attorney.

Appendix D

The second ground that I feel the District Court failed to consider is when would the statute of limitations begin to run in an alleged conspiracy of those acting under color of state law or those acting in concert with those acting under color of state law.

The third ground that I feel the District Court failed to consider is that the State of Tennessee was served properly since John Knox Walkup, Ch. Dep. Attorney General, received a copy of the Summons and of the Complaint on March 3, 1989.

The fourth ground that I feel the District Court failed to consider is that the those acting under color of state law or those acting in concert with those acting under color of state law are not entitled to sovereign immunity; judicial immunity; or qualified immunity when there are factual allegations of a conspiracy.

(2) Did the District Court incorrectly decide the facts? *YES* If so, what facts?

The District Court incorrectly decided the fact that the statute of limitations would run only from the time that I spent 10 days in prison. The alleged conspiracy came to an end on February 25, 1988 when the Court of Appeals of Tennessee, Western Section at Jackson, ruled that Defendant Lewis did not have jurisdiction in the matter. The statute of limitations pertaining to all acts of the alleged conspiracy must run from February 25, 1988.

The District Court incorrectly decided that there was not a class-based invidious discrimination allegation in the Complaint therefore without such an allegation, the conspiracy claims under 42 U.S.C. part 1985(2) would fail. The Complaint contains many allegations that the class-based invidious discrimination against the Plaintiff was because of being an admitted bisexual individual

and that the conspiracy was formed for the purpose of class-based invidious discrimination. Also the District Court incorrectly decided the fact that the civil state court action by the three individuals, Michael B. Vaughn, Ruby I. Miller, and Lillian V. Walls and their attorney Charles G. Black, along with those acting under color of state law was for the expressed purpose of a conspiracy to violate Plaintiff's civil rights. The District Court determined that Plaintiff did not flesh out the particulars enough to withstand a motion to dismiss.

The District Court incorrectly decided the fact that the actions of those acting under color of state law along with Defendants Vaughn, Miller, Walls, and Black was not for the purpose of the Plaintiff to violate the Temporary Restraining Order in order to create a civil state action. Without the violation of the Temporary Restraining Order the Defendants Vaughn, Miller, Walls, and Black would not have had an action in civil state court. Furthermore there could not have been a violation of the Temporary Restraining Order without the actions of those acting under color of state law.

The District Court incorrectly decided that the Writ, the Temporary Restraining Order, was valid and that there was not an allegations that it was invalid. There are several allegations in the Complaint as to the Temporary Restraining Order being for the purpose of creating an action in the civil state court and that the Writ was invalid and that it was not served properly.

(3) Do you think the District Court applied the wrong law? *YES* If so, what law do you want applied?

I feel that the District Court applied no laws when it came to the conclusion that none of the acts of those acting under color of state law were part of a conspiracy and that they have judicial immunity,

qualified immunity or quasijudicial immunity.

I would also like the following law applied:

> T.C.A. 8-8-302
>
> Suits against counties for wrongs of deputies.—Anyone incurring any wrong, lnJury, loss, damage or expense resulting from any act or failure to act on the part of any deputy appointed by the sheriff may bring suit against the county in which the sheriff serves; provided, that the deputy is, at the time of such occurrence, acting by virtue of, or under color of his office.

(4) Do you feel that there are any other reasons why the District Court's judgment was wrong: *YES* If so, what are they?

The other reasons I feel that the District Court's judgment was wrong is I have made many factual allegations about the conspiracy of those not acting under color of state law with those acting under color of state law.

I have alleged that the Temporary Restraining Order did not conform to the statutes of the State of Tennessee. I have alleged that Defendant Black gave the deputy sheriff instruction on how and when he want the Temporary Restraining Order delivered.

I have alleged that Defendants Lewis, Black and Robertson conspired to have the matter assigned to Defendant Lewis' court. I have alleged that Defendant Robertson as Clerk of Chancery Court did not act on the Temporary Restraining Order properly and timely.

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I alleged that Defendant Robertson had more than an interest in the matter as Clerk of Chancery Court, Shelby County, Tennessee but also was involved as a Special Chancellor acting in Defendant's Lewis place.

I have alleged that the true Plaintiffs in the Complaint and in the request for a Temporary Restraining Order were Defendants Miller and Walls and not Defendant Vaughn. I have alleged that Defendant Vaughn wanted the conspiracy to be over on or about October 1, 1986.

I have alleged that Defendant Lewis, Chancellor, did not allow me a fair trial. I had proof that the Temporary Restraining Order was not read or delivered to me but another postal employee received it with instructions from Defendant Henry to give it to me. I have alleged that Defendant Lewis would not let me question Defendant Henry about the Temporary Restraining Order.

I have alleged that Defendant Lewis lost jurisdiction of the matter but continued in the conspiracy. I have alleged that Lewis' acts were not judicial once his jurisdiction was challenged in the matter. I have alleged that Lewis' actions were not judicial because Tennessee statute specifically instructs Defendant Lewis, as Chancellor of Chancery Court, on how to dispose of a Complaint which request unliquidated damages.

(5) What action do you want the Court to take in this case?

The action I want the Court to take is to find that I have filed a complaint which contains factual allegations of violation of my civil rights under 42 U.S.C., parts 1983, 1985 and 1988 and also the First, Fourth, Sixth and Fourteenth Amendments. That I have stated a cause of action upon which a remedy can be made and that

there is federal jurisdiction and that my state claims are justifiable before the District Court.

I request that this Court remand my case back to the District Court for trial before a jury of my peers.

(6) Do you think that this Court should hear oral argument in this case? *YES* If so, why do you think so?

I think oral argument should be heard concerning the District Court's decision that all acting under color of state law are entitled to either judicial immunity, qualified immunity or quasi-judicial immunity.

Serious factual allegations of a conspiracy to violate my civil rights in order to create an action in a civil state court have been made. The desired results of the alleged conspirators could not have been obtained without the participation of those acting under color of state law.

The District Court has determined all the acts of those acting under color of state are valid and that all acting under color of state law are entitled to some type of immunity.

Also I think oral argument should be heard concerning the District Court's decision that a conspiracy founded for the purpose of classbased invidious discrimination cannot be based upon sexual preference and must fail under 42 U.S.C. part 1985 (2).

(7) Please state if you are requesting leave to proceed without prepayment of filing fees, appointment of counsel, or transcript at government expense.

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I am requesting leave to proceed without the appointment of counsel.

Respectfully Submitted,

/s William N. Odom, Jr.
William N. Odom, Jr.
857 Bowen Circle
Memphis, TN 38122

Appendix D

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-6439

WILLIAM N. ODOM, JR.

Plaintiff - Appellant

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE

Defendants - Appellees

APPELLANT'S DESIGNATION OF
APPENDIX CONTENTS

Appellant, pursuant to Sixth Circuit Rule 11 (b), hereby designates the following filings in the district court's record as items to be included in the joint appendix:

DESCRIPTION OF ENTRY	DATE	RECORD ENTRY NO.
Complaint	2/23/89	1
Notice and Acknowledgement of Receipt of Summons and Complaint	3/17/89	7

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Response of Plaintiff William N. Odom, Jr. to Defendants Michael B. Vaughn's, Ruby I. Miller's and Lillian V. Walls' Motion to Dismiss	5/4/89	42

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Respectfully submitted

s/William N. Odom, Jr.
William N. Odom, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 1992, two copies of the foregoing Brief and Joint Appendix Designation were sent via first class mail, postage prepaid, to the following counsel of record:

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Attorneys at Law
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Memphis, TN 38103

APPENDIX E — ORDER OF THE SIXTH CIRCUIT AFFIRMING THE TRIAL COURT

No. 91-6439

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM N. ODOM, JR.,

Plaintiff-Appellant,

v.

GEORGE T. LEWIS; CHARLES G. BLACK; J.J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE,

Defendants-Appellees.

ORDER

BEFORE; NELSON, NORRIS and SUHRHEINRICH, Circuit Judges.

William Odom, Jr., a pro se Tennessee citizen, appeals a district court order dismissing his civil rights suit filed pursuant to 42 U.S.C. §§ 1983, 1985, and 1988 for failure to state a claim. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Odom sued several private and state

actors, alleging that they had conspired to violate his civil rights. The district court determined that Odom's complaint failed to state a claim, because the private citizens were not state actors within the meaning of 42 U.S.C. § 1983 and the state actors were entitled to immunity. The court also determined that his §§ 1985 and 1988 claims were meritless and all his claims were barred by the statute of limitations. Odom has filed a timely appeal.

Upon review, we conclude that the district court properly determined that Odom failed to state a claim. Construing the complaint in the light most favorable to Odom and accepting his factual allegations as true, we determine that Odom undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. *Dana Corp. v. Blue Cross and Blue Shield,* 900 F.2d 882, 885 (6th Cir. 1990).

Accordingly, we affirm the judgment for the reasons set forth in the district court's order filed on October 4, 1991. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
s/ Leonard Green
Clerk

[stamped]
ISSUED AS MANDATE; 9/1/92
COSTS; No Costs
FILING FEE . . . . . $
PRINTING . . . . . $
TOTAL . . . . . $

A TRUE COPY
Attest:
LEONARD GREEN, Clerk
By s/ Diane Schnur
Deputy Clerk

Supreme Court, U.S.
FILED
DEC 22 1992
OFFICE OF THE CLERK

No. 92-796

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

v.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; and STATE OF TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

HENRY V. SUTTON
Counsel of Record

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11 pp

QUESTION PRESENTED FOR REVIEW

Whether the District Court erred in dismissing Petitioner's Complaint based on failure to state a cause of action upon which relief can be granted and based on the expiration of the applicable statute of limitation.

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No. 92-796

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

v.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY;
JOHN C. ROBERTSON; MICHAEL B. VAUGHN;
RUBY I. MILLER; LILLIAN V. WALLS;
SHELBY COUNTY GOVERNMENT;
and STATE OF TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS MICHAEL B. VAUGHN, RUBY I. MILLER AND LILLIAN V. WALLS

STATEMENT OF CASE

The Complaint herein was filed on February 23, 1989. The Complaint alleges that the named Respondents conspired to deprive Petitioner of his civil rights in violation of 42 U.S.C. Sections 1983, 1985 and 1988 and the First, Fourth, Sixth and Fourteenth Amendments to the Constitution of the United States. The Complaint alludes to certain pendent state claims but it does not state with any particularity what those state claims might be.

The Complaint states that on or about September 20, 1985, Petitioner secretly tape recorded a telephone conversation between himself and Vaughn wherein sexual aspects of their homosexual relationship were discussed. Shortly thereafter, Petitioner allegedly

told Vaughn of the existence of the tape recordings. Petitioner alleges that Walls, Miller, and Vaughn, through Attorney Black, on February 7, 1986, filed a Complaint for Injunction requesting a Temporary Restraining Order in the Chancery Court of Shelby County, Tennessee. The Temporary Restraining Order sought to prevent Petitioner from playing the tape recordings to others. At some point, the Temporary Restraining Order was issued by the Chancery Court and Petitioner was subsequently served with the Temporary Restraining Order. Further, Petitioner alleges that he, in fact, violated the Temporary Restraining Order on February 7, 1986. The Complaint For Injunction filed in Chancery Court was amended in order to ask for damages arising from the violation of the Temporary Restraining Order and also asking that Petitioner herein be found in contempt of Court.

The Complaint alleges that at the Chancery Court trial, on December 8, 1986, Mr. Odom was found guilty of outrageous conduct, and a judgment in the amount of $30,000.00 was entered against him. Mr. Odom was also found guilty of contempt of Court in connection with the violation of the Temporary Restraining Order, and was sentenced to serve ten (10) days in jail. On January 5, 1987, Mr. Odom entered the Shelby County Correctional Center and served ten (10) days. The Complaint alleges that on appeal, the judgment of the Chancery Court was reversed, the Tennessee Court of Appeals holding that the Chancery Court lacked subject matter jurisdiction.

In the instant action, all of the Respondents filed Motions To Dismiss on the grounds that the Complaint failed to state a claim upon which relief could be granted and that the applicable statute of limitations barred Petitioner's cause of action. On October 4, 1991, an Order was entered granting Defendants' Motions and dismissing the action. Judgment was entered on October 11, 1991. Petitioner's Notice of Appeal was filed on November 8, 1991. By Order dated August 10, 1992, the Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court without oral argument pursuant to Rule 9 of the Rules of the Sixth Circuit.

SUMMARY OF THE ARGUMENT

The District Court's Order, affirmed by the Sixth Circuit Court of Appeals without a hearing, dismissed Petitioner's Complaint on the basis of:

1. the failure to state factual allegations of the existence of a conspiracy;

2. the failure to allege any discriminatory or class-based motivation for the alleged conspiracy or acts;

3. and the failure to file the Complaint within the applicable one (1) year period from the time he knew or reasonably should have known of the alleged injury.

The dismissal of the Complaint by the District Court, and affirmed by the Court of Appeals, does not present special and important reasons for this Court's discretionary review on writ of certiorari.

ARGUMENT

1. PETITIONER'S FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Petitioner's civil rights complaint, based on alleged constitutional violations regarding 42 U.S.C. Sections 1983, 1985 and 1988, was properly dismissed by the District Court for failure to state a claim. The Sixth Circuit Court of Appeals reviewed the District Court's determination, and held that Mr. Odom could prove no set of facts in support of his claims that would entitle him to relief. The case was properly reviewed in a light most favorable to Mr. Odom, accepting all his allegations as true facts. There was no deviation or departure from accepted judicial proceedings to merit the attention of this Court.

There is no important federal question involved in this case since conclusory allegations of conspiracy, unsupported by any factual allegations, will not withstand a motion to dismiss. Factual allegations to support the claim of the existence of a conspiracy are required. Briscoe v. LaHue, 663 F.2d 713, 723 (7th Cir. 1981), affirmed, 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983); Chapman v. City of Detroit, 808 F.2d 459, 465 (6th Cir. 1986); Gutierrez v. Lynch, 826 F.2d 1534, 1538, 1539 (6th Cir. 1987).

The Sixth Circuit Court of Appeals followed the generally accepted rule that conclusory statements alleging a conspiracy are insufficient and must instead be supported by material facts. Kunik v. Racine County, Wisconsin, 946 F.2d 1574, 1580 (7th Cir. 1991); Young v.

Biggers, 938 F.2d 565, 569 (5th Cir. 1991); Gutierrez v. Lynch, 826 F.2d 1534, 1539 (6th Cir. 1987). Therefore, the Sixth Circuit Court of Appeals rendered a decision that in no way conflicts with the decision of another court of appeals on the failure to state material facts to support a conspiracy claim.

The decision rendered in the lower courts regarding Petitioner's failure to specify facts that would sufficiently state a claim upon which relief can be granted, does not present any of the reasons or character of reasons to be considered by this Court as set out in Rule 10 of the Supreme Court rules. The ruling of the District Court and the issues presented in this case are not unique or special, and do not merit review by this Court.

2. FAILURE TO STATE A CLASS-BASED MOTIVATION FOR ALLEGED ACTS.

The Petitioner's Complaint failed to state a claim that these Respondents conspired with others to deprive him of equal protection of the law, or equal privileges and immunities under the law. The Complaint omits the required element for a cause of action under 42 U.S.C. Section 1985 of some class-based motivation for the alleged acts of the alleged conspirators. Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971); Studen v. Beebe, 588 F.2d 560, 564 (6th Cir. 1978).

Due to the absence of alleged facts to indicate racial or some other class-based motivation behind the alleged conspirators' acts, there is no important federal question nor any deviation from the usual judicial proceedings regarding deprivation of equal protection of the law.

A complaint under 42 U.S.C. Section 1985 (3) is required to include an invidiously discriminatory animus behind the actions of alleged conspirators. The required element is not included in Petitioner's Complaint. Therefore, the Sixth Circuit Court of Appeal's decision on this particular issue is not in conflict with the decision of another United States Court of Appeals on the same matter, nor does this issue present an important question of federal law.

The omission of the required element for a Section 1985 cause of action, resulting in a dismissal by the District Court, fails to indicate any special or important reason that would justify the granting of the Petitioner's writ of certiorari.

3. PETITIONER'S CAUSE OF ACTION IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

Petitioner failed to file his Complaint within the applicable one (1) year period from the time he knew or reasonably should have known of the injury which was the basis of this action. Section 28-3-104 of the Tennessee Code Annotated provides for a one (1) year period of limitation for actions, "for compensatory or punitive damages, or both, brought under the federal civil rights statutes...." This period of limitation applies to actions founded upon both 42 U.S.C. Section 1983 and Section 1985 (3). Sevier v. Turner, 742 F.2d 262, 272 (6th Cir. 1984).

Federal law, however, governs the question of when the limitation period begins to run. Fiesel v. Board of Education, 675 F.2d 522, 524 (2nd Cir. 1982). The statute begins to run from the time the plaintiff knows, or has reason to know of the injury which forms the basis of his claim.

Petitioner filed the Complaint on February 23, 1989, claiming he had been deprived of his rights when he was found in contempt of court for violating an injunction issued in a Chancery Court suit. A judgment was rendered against Mr. Odom on December 8, 1986 in the amount of $30,000.00 when he was found guilty of outrageous conduct. Additionally, Petitioner was found guilty of contempt of court in connection with the violation of the Temporary Restraining Order, and was sentenced to ten (10) days in jail. Mr. Odom's ten (10) day sentence began on January 5, 1987. This confinement is the basis for his Complaint. Therefore, all the acts complained of by Petitioner occurred more than one year prior to the filing of his lawsuit. Additionally, Petitioner does not contend that there was anything done by Respondents to conceal the injury and damages sustained so as to toll the running of the statutory period. Also, as stated by the District Court, the last alleged act of conspiracy occurred November 2, 1989, when an appeal was posted, well over a year prior to the filing of the Complaint.

There is no important federal question presented, deviation from usual judicial proceedings, or conflict with other decisions. The Complaint, on its face, clearly indicates that the lawsuit was filed more than one (1) year after Mr. Odom knew, or through reasonable diligence should have known, of the alleged injury which is the basis of his Complaint.

Therefore, the Petitioner's request of this Court to review the lower Court's determination on this issue fails to fall within any of the reasons or character of reasons set out in Rule 10 of the Supreme Court Rules.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the petition for a writ of certiorari be denied. The discretionary review of this case is unwarranted pursuant to Rule 10 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

/s/ HENRY V. SUTTON
Counsel of Record

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